

106TH CONGRESS  
1ST SESSION

**S. 900**

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**AMENDMENTS**

# ***In the House of Representatives, U. S.,***

*July 20, 1999.*

*Resolved*, That the bill from the Senate (S. 900) entitled “An Act to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes”, do pass with the following

## **AMENDMENTS:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-***  
2 ***TENTS.***

3 (a) *SHORT TITLE.—This Act may be cited as the “Fi-*  
4 *ancial Services Act of 1999”.*

5 (b) *PURPOSES.—The purposes of this Act are as fol-*  
6 *lows:*

7 (1) *To enhance competition in the financial serv-*  
8 *ices industry, in order to foster innovation and effi-*  
9 *ciency.*

10 (2) *To ensure the continued safety and soundness*  
11 *of depository institutions.*

1           (3) *To provide necessary and appropriate protec-*  
2           *tions for investors and ensure fair and honest markets*  
3           *in the delivery of financial services.*

4           (4) *To avoid duplicative, potentially conflicting,*  
5           *and overly burdensome regulatory requirements*  
6           *through the creation of a regulatory framework for fi-*  
7           *nancial holding companies that respects the divergent*  
8           *requirements of each of the component businesses of*  
9           *the holding company, and that is based upon prin-*  
10          *ciples of strong functional regulation and enhanced*  
11          *regulatory coordination.*

12          (5) *To reduce and, to the maximum extent prac-*  
13          *ticable, to eliminate the legal barriers preventing af-*  
14          *filiation among depository institutions, securities*  
15          *firms, insurance companies, and other financial serv-*  
16          *ice providers and to provide a prudential framework*  
17          *for achieving that result.*

18          (6) *To enhance the availability of financial serv-*  
19          *ices to citizens of all economic circumstances and in*  
20          *all geographic areas.*

21          (7) *To enhance the competitiveness of United*  
22          *States financial service providers internationally.*

23          (8) *To ensure compliance by depository institu-*  
24          *tions with the provisions of the Community Reinvest-*  
25          *ment Act of 1977 and enhance the ability of deposi-*

*TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS,  
INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS*

*Sec. 101. Glass-Steagall Act reformed.*

*Sec. 102. Activity restrictions applicable to bank holding companies which are not financial holding companies.*

*Sec. 103. Financial holding companies.*

*Sec. 104. Operation of State law.*

*Sec. 105. Mutual bank holding companies authorized.*

*Sec. 105A. Public meetings for large bank acquisitions and mergers.*

*Sec. 106. Prohibition on deposit production offices.*

*Sec. 107. Clarification of branch closure requirements.*

*Sec. 108. Amendments relating to limited purpose banks.*

*Sec. 109. GAO study of economic impact on community banks, other small financial institutions, insurance agents, and consumers.*

*Sec. 110. Responsiveness to community needs for financial services.*

*Sec. 110A. Study of financial modernization's affect on the accessibility of small business and farm loans.*

*Sec. 111. Streamlining financial holding company supervision.*

*Sec. 112. Elimination of application requirement for financial holding companies.*

*Sec. 113. Authority of State insurance regulator and Securities and Exchange Commission.*

*Sec. 114. Prudential safeguards.*

*Sec. 115. Examination of investment companies.*

*Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.*

*Sec. 117. Equivalent regulation and supervision.*

*Sec. 118. Prohibition on FDIC assistance to affiliates and subsidiaries.*

*Sec. 119. Repeal of savings bank provisions in the Bank Holding Company Act of 1956.*

*Sec. 120. Technical amendment.*

*Sec. 121. Permissible activities for subsidiaries of national banks.*  
*Sec. 122. Safety and soundness firewalls between banks and their financial subsidiaries.*

*Sec. 123. Misrepresentations regarding depository institution liability for obligations of affiliates.*

*Sec. 124. Repeal of stock loan limit in Federal Reserve Act.*

*Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions*

*CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES*

*Sec. 131. Wholesale financial holding companies established.*

*Sec. 132. Authorization to release reports.*

*Sec. 133. Conforming amendments.*

*CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS*

*Sec. 136. Wholesale financial institutions.*

*Subtitle E—Preservation of FTC Authority*

*Sec. 141. Amendment to the Bank Holding Company Act of 1956 to modify notification and post-approval waiting period for section 3 transactions.*

*Sec. 142. Interagency data sharing.*

*Sec. 143. Clarification of status of subsidiaries and affiliates.*

*Sec. 144. Annual GAO report.*

*Subtitle F—National Treatment*

*Sec. 151. Foreign banks that are financial holding companies.*

*Sec. 152. Foreign banks and foreign financial institutions that are wholesale financial institutions.*

*Sec. 153. Representative offices.*

*Sec. 154. Reciprocity.*

*Subtitle G—Federal Home Loan Bank System Modernization*

*Sec. 161. Short title.*

*Sec. 162. Definitions.*

*Sec. 163. Savings association membership.*

*Sec. 164. Advances to members; collateral.*

*Sec. 165. Eligibility criteria.*

*Sec. 166. Management of banks.*

*Sec. 167. Resolution Funding Corporation.*

*Sec. 168. Capital structure of Federal home loan banks.*

*Subtitle H—ATM Fee Reform*

*Sec. 171. Short title.*

*Sec. 172. Electronic fund transfer fee disclosures at any host ATM.*

*Sec. 173. Disclosure of possible fees to consumers when ATM card is issued.*

*Sec. 174. Feasibility study.*

*Sec. 175. No liability if posted notices are damaged.*

*Subtitle I—Direct Activities of Banks*

*Sec. 181. Authority of national banks to underwrite certain municipal bonds.*

*Subtitle J—Deposit Insurance Funds*

- Sec. 186. Study of safety and soundness of funds.*  
*Sec. 187. Elimination of SAIF and DIF special reserves.*

*Subtitle K—Miscellaneous Provisions*

- Sec. 191. Termination of “know your customer” regulations.*  
*Sec. 192. Study and report on Federal electronic fund transfers.*  
*Sec. 193. General Accounting Office study of conflicts of interest.*  
*Sec. 194. Study of cost of all Federal banking regulations.*  
*Sec. 195. Study and report on adapting existing legislative requirements to on-line banking and lending.*  
*Sec. 196. Regulation of uninsured State member banks.*  
*Sec. 197. Clarification of source of strength doctrine.*  
*Sec. 198. Interest rates and other charges at interstate branches.*  
*Sec. 198A. Interstate branches and agencies of foreign banks.*  
*Sec. 198B. Fair treatment of women by financial advisers.*

*Subtitle L—Effective Date of Title*

- Sec. 199. Effective date.*

**TITLE II—FUNCTIONAL REGULATION***Subtitle A—Brokers and Dealers*

- Sec. 201. Definition of broker.*  
*Sec. 202. Definition of dealer.*  
*Sec. 203. Registration for sales of private securities offerings.*  
*Sec. 204. Information sharing.*  
*Sec. 205. Treatment of new hybrid products.*  
*Sec. 206. Definition of excepted banking product.*  
*Sec. 207. Additional definitions.*  
*Sec. 208. Government securities defined.*  
*Sec. 209. Effective date.*  
*Sec. 210. Rule of construction.*

*Subtitle B—Bank Investment Company Activities*

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*Sec. 212. Lending to an affiliated investment company.*  
*Sec. 213. Independent directors.*  
*Sec. 214. Additional SEC disclosure authority.*  
*Sec. 215. Definition of broker under the Investment Company Act of 1940.*  
*Sec. 216. Definition of dealer under the Investment Company Act of 1940.*  
*Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.*  
*Sec. 218. Definition of broker under the Investment Advisers Act of 1940.*  
*Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.*  
*Sec. 220. Interagency consultation.*  
*Sec. 221. Treatment of bank common trust funds.*  
*Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.*  
*Sec. 223. Statutory disqualification for bank wrongdoing.*  
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*Subtitle C—Securities and Exchange Commission Supervision of Investment  
Bank Holding Companies*

*Sec. 231. Supervision of investment bank holding companies by the Securities  
and Exchange Commission.*

*Subtitle D—Disclosure of Customer Costs of Acquiring Financial Products*

*Sec. 241. Improved and consistent disclosure.*

*Subtitle E—Banks and Bank Holding Companies*

*Sec. 251. Consultation.*

**TITLE III—INSURANCE**

*Subtitle A—State Regulation of Insurance*

*Sec. 301. State regulation of the business of insurance.*

*Sec. 302. Mandatory insurance licensing requirements.*

*Sec. 303. Functional regulation of insurance.*

*Sec. 304. Insurance underwriting in national banks.*

*Sec. 305. Title insurance activities of national banks and their affiliates.*

*Sec. 306. Expedited and equalized dispute resolution for Federal regulators.*

*Sec. 307. Consumer protection regulations.*

*Sec. 308. Certain State affiliation laws preempted for insurance companies and  
affiliates.*

*Sec. 309. Interagency consultation.*

*Sec. 310. Definition of State.*

*Subtitle B—Redomestication of Mutual Insurers*

*Sec. 311. General application.*

*Sec. 312. Redomestication of mutual insurers.*

*Sec. 313. Effect on State laws restricting redomestication.*

*Sec. 314. Other provisions.*

*Sec. 315. Definitions.*

*Sec. 316. Effective date.*

*Subtitle C—National Association of Registered Agents and Brokers*

*Sec. 321. State flexibility in multistate licensing reforms.*

*Sec. 322. National Association of Registered Agents and Brokers.*

*Sec. 323. Purpose.*

*Sec. 324. Relationship to the Federal Government.*

*Sec. 325. Membership.*

*Sec. 326. Board of directors.*

*Sec. 327. Officers.*

*Sec. 328. Bylaws, rules, and disciplinary action.*

*Sec. 329. Assessments.*

*Sec. 330. Functions of the NAIC.*

*Sec. 331. Liability of the Association and the directors, officers, and employees  
of the Association.*

*Sec. 332. Elimination of NAIC oversight.*

*Sec. 333. Relationship to State law.*

- Sec. 334. Coordination with other regulators.*  
*Sec. 335. Judicial review.*  
*Sec. 336. Definitions.*

*Subtitle D—Rental Car Agency Insurance Activities*

- Sec. 341. Standard of regulation for motor vehicle rentals.*

*Subtitle E—Confidentiality*

- Sec. 351. Confidentiality of health and medical information.*

*TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES*

- Sec. 401. Prohibition on new unitary savings and loan holding companies.*  
*Sec. 402. Retention of “Federal” in name of converted Federal savings association.*

*TITLE V—PRIVACY*

*Subtitle A—Disclosure of Nonpublic Personal Information*

- Sec. 501. Protection of nonpublic personal information.*  
*Sec. 502. Obligations with respect to disclosures of personal information.*  
*Sec. 503. Disclosure of institution privacy policy.*  
*Sec. 504. Rulemaking.*  
*Sec. 505. Enforcement.*  
*Sec. 506. Fair Credit Reporting Act amendment.*  
*Sec. 507. Relation to other provisions.*  
*Sec. 508. Study of information sharing among financial affiliates.*  
*Sec. 509. Definitions.*  
*Sec. 510. Effective date.*

*Subtitle B—Fraudulent Access to Financial Information*

- Sec. 521. Privacy protection for customer information of financial institutions.*  
*Sec. 522. Administrative enforcement.*  
*Sec. 523. Criminal penalty.*  
*Sec. 524. Relation to State laws.*  
*Sec. 525. Agency guidance.*  
*Sec. 526. Reports.*  
*Sec. 527. Definitions.*



1 **TITLE I—FACILITATING AFFILI-**  
 2 **ATION AMONG SECURITIES**  
 3 **FIRMS, INSURANCE COMPA-**  
 4 **NIES, AND DEPOSITORY IN-**  
 5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) *SECTION 20 REPEALED.*—Section 20 of the Bank-  
 9 ing Act of 1933 (12 U.S.C. 377) (commonly referred to as  
 10 the “Glass-Steagall Act”) is repealed.

11 (b) *SECTION 32 REPEALED.*—Section 32 of the Bank-  
 12 ing Act of 1933 (12 U.S.C. 78) is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**  
 14 **HOLDING COMPANIES WHICH ARE NOT FI-**  
 15 **NANCIAL HOLDING COMPANIES.**

16 (a) *IN GENERAL.*—Section 4(c)(8) of the Bank Hold-  
 17 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amend-  
 18 ed to read as follows:

19 “(8) shares of any company the activities of  
 20 which had been determined by the Board by regula-  
 21 tion or order under this paragraph as of the day be-  
 22 fore the date of the enactment of the Financial Serv-  
 23 ices Act of 1999, to be so closely related to banking  
 24 as to be a proper incident thereto (subject to such

1        *terms and conditions contained in such regulation or*  
 2        *order, unless modified by the Board);”.*

3        *(b) CONFORMING CHANGES TO OTHER STATUTES.—*

4                *(1) AMENDMENT TO THE BANK HOLDING COM-*  
 5        *PANY ACT AMENDMENTS OF 1970.—Section 105 of the*  
 6        *Bank Holding Company Act Amendments of 1970 (12*  
 7        *U.S.C. 1850) is amended by striking “, to engage di-*  
 8        *rectly or indirectly in a nonbanking activity pursu-*  
 9        *ant to section 4 of such Act,”.*

10               *(2) AMENDMENT TO THE BANK SERVICE COM-*  
 11        *PANY ACT.—Section 4(f) of the Bank Service Com-*  
 12        *pany Act (12 U.S.C. 1864(f)) is amended by striking*  
 13        *the period and adding at the end the following: “as*  
 14        *of the day before the date of the enactment of the Fi-*  
 15        *nancial Services Act of 1999.”.*

16        **SEC. 103. FINANCIAL HOLDING COMPANIES.**

17        *(a) IN GENERAL.—The Bank Holding Company Act*  
 18        *of 1956 is amended by inserting after section 5 (12 U.S.C.*  
 19        *1844) the following new section:*

20        **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

21               *“(a) FINANCIAL HOLDING COMPANY DEFINED.—For*  
 22        *purposes of this section, the term ‘financial holding com-*  
 23        *pany’ means a bank holding company which meets the re-*  
 24        *quirements of subsection (b).*

1       “(b) *ELIGIBILITY REQUIREMENTS FOR FINANCIAL*  
 2 *HOLDING COMPANIES.*—

3               “(1) *IN GENERAL.*—No bank holding company  
 4       may engage in any activity or directly or indirectly  
 5       acquire or retain shares of any company under this  
 6       section unless the bank holding company meets the  
 7       following requirements:

8               “(A) *All of the subsidiary depository insti-*  
 9       *tutions of the bank holding company are well*  
 10       *capitalized.*

11              “(B) *All of the subsidiary depository insti-*  
 12       *tutions of the bank holding company are well*  
 13       *managed.*

14              “(C) *All of the subsidiary depository insti-*  
 15       *tutions of the bank holding company have*  
 16       *achieved a rating of ‘satisfactory record of meet-*  
 17       *ing community credit needs’, or better, at the*  
 18       *most recent examination of each such institution.*

19              “(D) *The company has filed with the Board*  
 20       *a declaration that the company elects to be a fi-*  
 21       *nancial holding company and certifying that the*  
 22       *company meets the requirements of subpara-*  
 23       *graphs (A), (B), and (C).*

24              “(2) *FOREIGN BANKS AND COMPANIES.*—For  
 25       purposes of paragraph (1), the Board shall establish

1     *and apply comparable capital and other operating*  
 2     *standards to a foreign bank that operates a branch or*  
 3     *agency or owns or controls a bank or commercial*  
 4     *lending company in the United States, and any com-*  
 5     *pany that owns or controls such foreign bank, giving*  
 6     *due regard to the principle of national treatment and*  
 7     *equality of competitive opportunity.*

8             “(3) *LIMITED EXCLUSIONS FROM COMMUNITY*  
 9     *NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOS-*  
 10    *ITORY INSTITUTIONS.*—*Any depository institution ac-*  
 11    *quired by a bank holding company during the 12-*  
 12    *month period preceding the submission of a notice*  
 13    *under paragraph (1)(D) and any depository institu-*  
 14    *tion acquired after the submission of such notice may*  
 15    *be excluded for purposes of paragraph (1)(C) during*  
 16    *the 12-month period beginning on the date of such ac-*  
 17    *quisition if—*

18             “(A) *the bank holding company has sub-*  
 19    *mitted an affirmative plan to the appropriate*  
 20    *Federal banking agency to take such action as*  
 21    *may be necessary in order for such institution to*  
 22    *achieve a rating of ‘satisfactory record of meet-*  
 23    *ing community credit needs’, or better, at the*  
 24    *next examination of the institution; and*

1                   “(B) *the plan has been accepted by such*  
 2                   *agency.*

3           “(c) *ENGAGING IN ACTIVITIES THAT ARE FINANCIAL*  
 4 *IN NATURE.—*

5                   “(1) *FINANCIAL ACTIVITIES.—*

6                   “(A) *IN GENERAL.—Notwithstanding sec-*  
 7                   *tion 4(a), a financial holding company may en-*  
 8                   *gage in any activity, and acquire and retain the*  
 9                   *shares of any company engaged in any activity,*  
 10                   *that the Board has determined (by regulation or*  
 11                   *order and in accordance with subparagraph (B))*  
 12                   *to be—*

13                   “(i) *financial in nature or incidental*  
 14                   *to such financial activities; or*

15                   “(ii) *complementary to activities au-*  
 16                   *thorized under this subsection to the extent*  
 17                   *that the amount of such complementary ac-*  
 18                   *tivities remains small.*

19                   “(B) *COORDINATION BETWEEN THE BOARD*  
 20 *AND THE SECRETARY OF THE TREASURY.—*

21                   “(i) *PROPOSALS RAISED BEFORE THE*  
 22                   *BOARD.—*

23                   “(I) *CONSULTATION.—The Board*  
 24                   *shall notify the Secretary of the Treas-*  
 25                   *ury of, and consult with the Secretary*

1           *of the Treasury concerning, any re-*  
 2           *quest, proposal, or application under*  
 3           *this subsection, including a regulation*  
 4           *or order proposed under paragraph*  
 5           *(4), for a determination of whether an*  
 6           *activity is financial in nature or inci-*  
 7           *dental to such a financial activity.*

8                   “(II)    *TREASURY    VIEW.—The*  
 9           *Board shall not determine that any ac-*  
 10          *tivity is financial in nature or inci-*  
 11          *dental to a financial activity under*  
 12          *this subsection if the Secretary of the*  
 13          *Treasury notifies the Board in writing,*  
 14          *not later than 30 days after the date of*  
 15          *receipt of the notice described in sub-*  
 16          *clause (I) (or such longer period as the*  
 17          *Board determines to be appropriate in*  
 18          *light of the circumstances) that the*  
 19          *Secretary of the Treasury believes that*  
 20          *the activity is not financial in nature*  
 21          *or incidental to a financial activity.*

22                   “(i)    *PROPOSALS    RAISED    BY    THE*  
 23          *TREASURY.—*

24                   “(I)    *TREASURY    RECOMMENDA-*  
 25          *TION.—The Secretary of the Treasury*

1            *may, at any time, recommend in writ-*  
2            *ing that the Board find an activity to*  
3            *be financial in nature or incidental to*  
4            *a financial activity.*

5            *“(II) TIME PERIOD FOR BOARD*  
6            *ACTION.—Not later than 30 days after*  
7            *the date of receipt of a written rec-*  
8            *ommendation from the Secretary of the*  
9            *Treasury under subclause (I) (or such*  
10           *longer period as the Secretary of the*  
11           *Treasury and the Board determine to*  
12           *be appropriate in light of the cir-*  
13           *cumstances), the Board shall determine*  
14           *whether to initiate a public rule-*  
15           *making proposing that the subject rec-*  
16           *ommended activity be found to be fi-*  
17           *nancial in nature or incidental to a fi-*  
18           *nancial activity under this subsection,*  
19           *and shall notify the Secretary of the*  
20           *Treasury in writing of the determina-*  
21           *tion of the Board and, in the event*  
22           *that the Board determines not to seek*  
23           *public comment on the proposal, the*  
24           *reasons for that determination.*

1           “(2) *FACTORS TO BE CONSIDERED.*—*In deter-*  
2           *mining whether an activity is financial in nature or*  
3           *incidental to financial activities, the Board shall take*  
4           *into account—*

5                     “(A) *the purposes of this Act and the Fi-*  
6                     *nanacial Services Act of 1999;*

7                     “(B) *changes or reasonably expected changes*  
8                     *in the marketplace in which bank holding com-*  
9                     *panies compete;*

10                    “(C) *changes or reasonably expected changes*  
11                    *in the technology for delivering financial serv-*  
12                    *ices; and*

13                    “(D) *whether such activity is necessary or*  
14                    *appropriate to allow a bank holding company*  
15                    *and the affiliates of a bank holding company*  
16                    *to—*

17                             “(i) *compete effectively with any com-*  
18                             *pany seeking to provide financial services*  
19                             *in the United States;*

20                             “(ii) *use any available or emerging*  
21                             *technological means, including any applica-*  
22                             *tion necessary to protect the security or effi-*  
23                             *cacy of systems for the transmission of data*  
24                             *or financial transactions, in providing fi-*  
25                             *nanacial services; and*



1                   “(iii) offer customers any available or  
2                   emerging technological means for using fi-  
3                   nancial services.

4                   “(3) *ACTIVITIES THAT ARE FINANCIAL IN NA-*  
5                   *TURE.—The following activities shall be considered to*  
6                   *be financial in nature:*

7                   “(A) *Lending, exchanging, transferring, in-*  
8                   *vesting for others, or safeguarding money or se-*  
9                   *curities.*

10                  “(B) *Insuring, guaranteeing, or indem-*  
11                  *nifying against loss, harm, damage, illness, dis-*  
12                  *ability, or death, or providing and issuing annu-*  
13                  *ities, and acting as principal, agent, or broker*  
14                  *for purposes of the foregoing.*

15                  “(C) *Providing financial, investment, or*  
16                  *economic advisory services, including advising*  
17                  *an investment company (as defined in section 3*  
18                  *of the Investment Company Act of 1940).*

19                  “(D) *Issuing or selling instruments rep-*  
20                  *resenting interests in pools of assets permissible*  
21                  *for a bank to hold directly.*

22                  “(E) *Underwriting, dealing in, or making a*  
23                  *market in securities.*

24                  “(F) *Engaging in any activity that the*  
25                  *Board has determined, by order or regulation*

1       *that is in effect on the date of the enactment of*  
2       *the Financial Services Act of 1999, to be so close-*  
3       *ly related to banking or managing or controlling*  
4       *banks as to be a proper incident thereto (subject*  
5       *to the same terms and conditions contained in*  
6       *such order or regulation, unless modified by the*  
7       *Board).*

8               “(G) *Engaging, in the United States, in*  
9       *any activity that—*

10               “(i) *a bank holding company may en-*  
11       *gage in outside the United States; and*

12               “(ii) *the Board has determined, under*  
13       *regulations issued pursuant to section*  
14       *4(c)(13) of this Act (as in effect on the day*  
15       *before the date of the enactment of the Fi-*  
16       *ancial Services Act of 1999) to be usual in*  
17       *connection with the transaction of banking*  
18       *or other financial operations abroad.*

19               “(H) *Directly or indirectly acquiring or*  
20       *controlling, whether as principal, on behalf of*  
21       *one or more entities (including entities, other*  
22       *than a depository institution, that the bank hold-*  
23       *ing company controls) or otherwise, shares, as-*  
24       *sets, or ownership interests (including without*  
25       *limitation debt or equity securities, partnership*

1        *interests, trust certificates or other instruments*  
2        *representing ownership) of a company or other*  
3        *entity, whether or not constituting control of*  
4        *such company or entity, engaged in any activity*  
5        *not authorized pursuant to this section if—*

6                *“(i) the shares, assets, or ownership in-*  
7                *terests are not acquired or held by a deposi-*  
8                *tory institution;*

9                *“(ii) such shares, assets, or ownership*  
10               *interests are acquired and held by an affil-*  
11               *iate of the bank holding company that is a*  
12               *registered broker or dealer that is engaged*  
13               *in securities underwriting activities, or an*  
14               *affiliate of such broker or dealer, as part of*  
15               *a bona fide underwriting or investment*  
16               *banking activity, including investment ac-*  
17               *tivities engaged in for the purpose of appre-*  
18               *ciation and ultimate resale or disposition of*  
19               *the investment;*

20               *“(iii) such shares, assets, or ownership*  
21               *interests are held only for such a period of*  
22               *time as will permit the sale or disposition*  
23               *thereof on a reasonable basis consistent with*  
24               *the nature of the activities described in*  
25               *clause (ii); and*

1           “(iv) during the period such shares, as-  
2           sets, or ownership interests are held, the  
3           bank holding company does not actively  
4           participate in the day to day management  
5           or operation of such company or entity, ex-  
6           cept insofar as necessary to achieve the ob-  
7           jectives of clause (ii).

8           “(I) Directly or indirectly acquiring or con-  
9           trolling, whether as principal, on behalf of one or  
10          more entities (including entities, other than a de-  
11          pository institution or subsidiary of a depository  
12          institution, that the bank holding company con-  
13          trols) or otherwise, shares, assets, or ownership  
14          interests (including without limitation debt or  
15          equity securities, partnership interests, trust cer-  
16          tificates or other instruments representing own-  
17          ership) of a company or other entity, whether or  
18          not constituting control of such company or enti-  
19          ty, engaged in any activity not authorized pur-  
20          suant to this section if—

21               “(i) the shares, assets, or ownership in-  
22               terests are not acquired or held by a deposi-  
23               tory institution or a subsidiary of a deposi-  
24               tory institution;

1           “(ii) *such shares, assets, or ownership*  
 2           *interests are acquired and held by an insur-*  
 3           *ance company that is predominantly en-*  
 4           *gaged in underwriting life, accident and*  
 5           *health, or property and casualty insurance*  
 6           *(other than credit-related insurance) or pro-*  
 7           *viding and issuing annuities;*

8           “(iii) *such shares, assets, or ownership*  
 9           *interests represent an investment made in*  
 10          *the ordinary course of business of such in-*  
 11          *surance company in accordance with rel-*  
 12          *evant State law governing such investments;*  
 13          *and*

14          “(iv) *during the period such shares, as-*  
 15          *sets, or ownership interests are held, the*  
 16          *bank holding company does not directly or*  
 17          *indirectly participate in the day-to-day*  
 18          *management or operation of the company*  
 19          *or entity except insofar as necessary to*  
 20          *achieve the objectives of clauses (ii) and*  
 21          *(iii).*

22          “(4) *AUTHORIZATION OF NEW FINANCIAL ACTIVI-*  
 23          *TIES.—The Board shall, by regulation or order and*  
 24          *in accordance with paragraph (1)(B), define, con-*  
 25          *sistent with the purposes of this Act, the following ac-*

1        *tivities as, and the extent to which such activities are,*  
 2        *financial in nature or incidental to activities which*  
 3        *are financial in nature:*

4                *“(A) Lending, exchanging, transferring, in-*  
 5                *vesting for others, or safeguarding financial as-*  
 6                *sets other than money or securities.*

7                *“(B) Providing any device or other instru-*  
 8                *mentality for transferring money or other finan-*  
 9                *cial assets.*

10               *“(C) Arranging, effecting, or facilitating fi-*  
 11               *nancial transactions for the account of third*  
 12               *parties.*

13               *“(5) POST-CONSUMMATION NOTIFICATION.—*

14               *“(A) IN GENERAL.—A financial holding*  
 15               *company that acquires any company, or com-*  
 16               *mences any activity, pursuant to this subsection*  
 17               *shall provide written notice to the Board describ-*  
 18               *ing the activity commenced or conducted by the*  
 19               *company acquired no later than 30 calendar*  
 20               *days after commencing the activity or consum-*  
 21               *mating the acquisition.*

22               *“(B) APPROVAL NOT REQUIRED FOR CER-*  
 23               *TAIN FINANCIAL ACTIVITIES.—Except as pro-*  
 24               *vided in section 4(j) with regard to the acquisi-*  
 25               *tion of a savings association or in paragraph (6)*

1       *of this subsection, a financial holding company*  
 2       *may commence any activity, or acquire any*  
 3       *company, pursuant to paragraph (3) or any reg-*  
 4       *ulation prescribed or order issued under para-*  
 5       *graph (4), without prior approval of the Board.*

6       “(6) NOTICE REQUIRED FOR LARGE COMBINA-  
 7       TIONS.—

8               “(A) IN GENERAL.—No financial holding  
 9       company shall directly or indirectly acquire, and  
 10       no company that becomes a financial holding  
 11       company shall directly or indirectly acquire con-  
 12       trol of, any company in the United States, in-  
 13       cluding through merger, consolidation, or other  
 14       type of business combination, that—

15               “(i) is engaged in activities permitted  
 16       under this subsection or subsection (g); and

17               “(ii) has consolidated total assets in  
 18       excess of \$40,000,000,000,

19       unless such holding company has provided notice  
 20       to the Board, not later than 60 days prior to  
 21       such proposed acquisition or prior to becoming a  
 22       financial holding company, and during that  
 23       time period, or such longer time period not ex-  
 24       ceeding an additional 60 days, as established by

1           *the Board, the Board has not issued a notice dis-*  
2           *approving the proposed acquisition or retention.*

3           “(B) *FACTORS FOR CONSIDERATION.—In*  
4           *reviewing any prior notice filed under this para-*  
5           *graph, the Board shall take into consideration—*

6                   “(i) *whether the company is in compli-*  
7                   *ance with all applicable criteria set forth in*  
8                   *subsection (b) and the provisions of sub-*  
9                   *section (d);*

10                   “(ii) *whether the proposed combination*  
11                   *represents an undue aggregation of re-*  
12                   *sources;*

13                   “(iii) *whether the proposed combina-*  
14                   *tion poses a risk to the deposit insurance*  
15                   *system;*

16                   “(iv) *whether the proposed combination*  
17                   *poses a risk to State insurance guaranty*  
18                   *funds;*

19                   “(v) *whether the proposed combination*  
20                   *can reasonably be expected to be in the best*  
21                   *interests of depositors or policyholders of the*  
22                   *respective entities;*

23                   “(vi) *whether the proposed transaction*  
24                   *can reasonably be expected to further the*



1           *purposes of this Act and produce benefits to*  
 2           *the public; and*

3           “(vii) *whether, and the extent to which,*  
 4           *the proposed combination poses an undue*  
 5           *risk to the stability of the financial system*  
 6           *in the United States.*

7           “(C) *REQUIRED INFORMATION.—The Board*  
 8           *may disapprove any prior notice filed under this*  
 9           *paragraph if the company submitting such no-*  
 10          *tice neglects, fails, or refuses to furnish to the*  
 11          *Board all relevant information required by the*  
 12          *Board.*

13          “(D) *SOLICITATION OF VIEWS OF OTHER*  
 14          *SUPERVISORY AGENCIES.—*

15          “(i) *IN GENERAL.—Upon receiving a*  
 16          *prior notice under this paragraph, in order*  
 17          *to provide for the submission of their views*  
 18          *and recommendations, the Board shall give*  
 19          *notice of the proposal to—*

20                 “(I) *the appropriate Federal*  
 21                 *banking agency of any bank involved;*

22                 “(II) *the appropriate functional*  
 23                 *regulator of any functionally regulated*  
 24                 *nondepository institution (as defined*  
 25                 *in section 5(c)(1)(C)) involved; and*

1                   “(III) the Secretary of the Treas-  
 2                   ury, the Attorney General, and the  
 3                   Federal Trade Commission.

4                   “(ii) *TIMING.*—The views and rec-  
 5                   ommendations of any agency provided no-  
 6                   tice under this paragraph shall be submitted  
 7                   to the Board not later than 30 calendar  
 8                   days after the date on which notice to the  
 9                   agency was given, unless the Board deter-  
 10                  mines that another shorter time period is  
 11                  appropriate.

12               “(d) *PROVISIONS APPLICABLE TO FINANCIAL HOLDING*  
 13 *COMPANIES THAT FAIL TO MEET REQUIREMENTS.*—

14               “(1) *IN GENERAL.*—If the Board finds, after no-  
 15               tice from or consultation with the appropriate Fed-  
 16               eral banking agency, that a financial holding com-  
 17               pany is not in compliance with the requirements of  
 18               subparagraph (A), (B), or (C) of subsection (b)(1), the  
 19               Board shall give notice of such finding to the com-  
 20               pany.

21               “(2) *AGREEMENT TO CORRECT CONDITIONS RE-*  
 22 *QUIRED.*—Within 45 days of receipt by a financial  
 23               holding company of a notice given under paragraph  
 24               (1) (or such additional period as the Board may per-  
 25               mit), the company shall execute an agreement accept-

1        *able to the Board to comply with the requirements ap-*  
 2        *plicable to a financial holding company.*

3            “(3) *AUTHORITY TO IMPOSE LIMITATIONS.—*  
 4        *Until the conditions described in a notice to a finan-*  
 5        *cial holding company under paragraph (1) are*  
 6        *corrected—*

7            “(A) *the Board may impose such limita-*  
 8        *tions on the conduct or activities of the company*  
 9        *or any affiliate of the company as the Board de-*  
 10       *termines to be appropriate under the cir-*  
 11       *cumstances; and*

12           “(B) *the appropriate Federal banking agen-*  
 13        *cy may impose such limitations on the conduct*  
 14        *or activities of an affiliated depository institu-*  
 15        *tion or subsidiary of a depository institution as*  
 16        *the appropriate Federal banking agency deter-*  
 17        *mines to be appropriate under the circumstances.*

18           “(4) *FAILURE TO CORRECT.—If, after receiving a*  
 19        *notice under paragraph (1), a financial holding com-*  
 20        *pany does not—*

21           “(A) *execute and implement an agreement*  
 22        *in accordance with paragraph (2);*

23           “(B) *comply with any limitations imposed*  
 24        *under paragraph (3);*

1           “(C) in the case of a notice of failure to  
2           comply with subsection (b)(1)(A), restore each  
3           depository institution subsidiary to well capital-  
4           ized status before the end of the 180-day period  
5           beginning on the date such notice is received by  
6           the company (or such other period permitted by  
7           the Board); or

8           “(D) in the case of a notice of failure to  
9           comply with subparagraph (B) or (C) of sub-  
10          section (b)(1), restore compliance with any such  
11          subparagraph by the date the next examination  
12          of the depository institution subsidiary is com-  
13          pleted or by the end of such other period as the  
14          Board determines to be appropriate,  
15          the Board may require such company, under such  
16          terms and conditions as may be imposed by the  
17          Board and subject to such extension of time as may  
18          be granted in the Board’s discretion, to divest control  
19          of any depository institution subsidiary or, at the  
20          election of the financial holding company, instead to  
21          cease to engage in any activity conducted by such  
22          company or its subsidiaries pursuant to this section.

23          “(5) CONSULTATION.—In taking any action  
24          under this subsection, the Board shall consult with all  
25          relevant Federal and State regulatory agencies.

1       “(e) *SAFEGUARDS FOR BANK SUBSIDIARIES.*—A fi-  
 2       nancial holding company shall assure that—

3               “(1) *the procedures of the holding company for*  
 4       *identifying and managing financial and operational*  
 5       *risks within the company, and the subsidiaries of*  
 6       *such company, adequately protect the subsidiaries of*  
 7       *such company which are insured depository institu-*  
 8       *tions or wholesale financial institution from such*  
 9       *risks;*

10              “(2) *the holding company has reasonable policies*  
 11       *and procedures to preserve the separate corporate*  
 12       *identity and limited liability of such company and*  
 13       *the subsidiaries of such company, for the protection of*  
 14       *the company’s subsidiary insured depository institu-*  
 15       *tions and wholesale financial institutions; and*

16              “(3) *the holding company complies with this sec-*  
 17       *tion.*

18       “(f) *AUTHORITY TO RETAIN LIMITED NONFINANCIAL*  
 19       *ACTIVITIES AND AFFILIATIONS.*—

20              “(1) *IN GENERAL.*—Notwithstanding section  
 21       4(a), a company that is not a bank holding company  
 22       or a foreign bank (as defined in section 1(b)(7) of the  
 23       *International Banking Act of 1978*) and becomes a fi-  
 24       nancial holding company after the date of the enact-  
 25       ment of the *Financial Services Act of 1999* may con-

1 *tinue to engage in any activity and retain direct or*  
 2 *indirect ownership or control of shares of a company*  
 3 *engaged in any activity if—*

4 *“(A) the holding company lawfully was en-*  
 5 *gaged in the activity or held the shares of such*  
 6 *company on September 30, 1997;*

7 *“(B) the holding company is predominantly*  
 8 *engaged in financial activities as defined in*  
 9 *paragraph (2); and*

10 *“(C) the company engaged in such activity*  
 11 *continues to engage only in the same activities*  
 12 *that such company conducted on September 30,*  
 13 *1997, and other activities permissible under this*  
 14 *Act.*

15 *“(2) PREDOMINANTLY FINANCIAL.—For purposes*  
 16 *of this subsection, a company is predominantly en-*  
 17 *gaged in financial activities if the annual gross reve-*  
 18 *nues derived by the holding company and all subsidi-*  
 19 *aries of the holding company (excluding revenues de-*  
 20 *rived from subsidiary depository institutions), on a*  
 21 *consolidated basis, from engaging in activities that*  
 22 *are financial in nature or are incidental to activities*  
 23 *that are financial in nature under subsection (c) rep-*  
 24 *resent at least 85 percent of the consolidated annual*  
 25 *gross revenues of the company.*

1           “(3) *NO EXPANSION OF GRANDFATHERED COM-*  
2           *MERCIAL ACTIVITIES THROUGH MERGER OR CONSOLI-*  
3           *DATION.*—*A financial holding company that engages*  
4           *in activities or holds shares pursuant to this sub-*  
5           *section, or a subsidiary of such financial holding*  
6           *company, may not acquire, in any merger, consolida-*  
7           *tion, or other type of business combination, assets of*  
8           *any other company which is engaged in any activity*  
9           *which the Board has not determined to be financial*  
10          *in nature or incidental to activities that are financial*  
11          *in nature under subsection (c), except this paragraph*  
12          *shall not apply with respect to a company that owns*  
13          *a broadcasting station licensed under title III of the*  
14          *Communications Act of 1934 and the shares of which*  
15          *have been controlled by an insurance company since*  
16          *January 1, 1998.*

17          “(4) *CONTINUING REVENUE LIMITATION ON*  
18          *GRANDFATHERED COMMERCIAL ACTIVITIES.*—*Not-*  
19          *withstanding any other provision of this subsection, a*  
20          *financial holding company may continue to engage in*  
21          *activities or hold shares in companies pursuant to*  
22          *this subsection only to the extent that the aggregate*  
23          *annual gross revenues derived from all such activities*  
24          *and all such companies does not exceed 15 percent of*  
25          *the consolidated annual gross revenues of the finan-*

1      *cial holding company (excluding revenues derived*  
 2      *from subsidiary depository institutions).*

3            “(5) *CROSS MARKETING RESTRICTIONS APPLICA-*  
 4      *BLE TO COMMERCIAL ACTIVITIES.*—*A depository in-*  
 5      *stitution controlled by a financial holding company*  
 6      *shall not—*

7            “(A) *offer or market, directly or through*  
 8      *any arrangement, any product or service of a*  
 9      *company whose activities are conducted or whose*  
 10     *shares are owned or controlled by the financial*  
 11     *holding company pursuant to this subsection or*  
 12     *subparagraph (H) or (I) of subsection (c)(3); or*

13          “(B) *permit any of its products or services*  
 14     *to be offered or marketed, directly or through any*  
 15     *arrangement, by or through any company de-*  
 16     *scribed in subparagraph (A).*

17          “(6) *TRANSACTIONS WITH NONFINANCIAL AFFILI-*  
 18     *ATES.*—*A depository institution controlled by a fi-*  
 19     *nancial holding company may not engage in a cov-*  
 20     *ered transaction (as defined by section 23A(b)(7) of*  
 21     *the Federal Reserve Act) with any affiliate controlled*  
 22     *by the company pursuant to section 10(c), this sub-*  
 23     *section, or subparagraph (H) or (I) of subsection*  
 24     *(c)(3).*



1           “(7) *SUNSET OF GRANDFATHER.*—A financial  
 2           *holding company engaged in any activity, or retain-*  
 3           *ing direct or indirect ownership or control of shares*  
 4           *of a company, pursuant to this subsection, shall ter-*  
 5           *minate such activity and divest ownership or control*  
 6           *of the shares of such company before the end of the*  
 7           *10-year period beginning on the date of the enactment*  
 8           *of the Financial Services Act of 1999. The Board*  
 9           *may, upon application by a financial holding com-*  
 10          *pany, extend such 10-year period by a period not to*  
 11          *exceed an additional 5 years if such extension would*  
 12          *not be detrimental to the public interest.*

13          “(g) *DEVELOPING ACTIVITIES.*—A financial holding  
 14          *company may engage directly or indirectly, or acquire*  
 15          *shares of any company engaged, in any activity that the*  
 16          *Board has not determined to be financial in nature or inci-*  
 17          *dental to financial activities under subsection (c) if—*

18                 “(1) *the holding company reasonably concludes*  
 19                 *that the activity is financial in nature or incidental*  
 20                 *to financial activities;*

21                 “(2) *the gross revenues from all activities con-*  
 22                 *ducted under this subsection represent less than 5 per-*  
 23                 *cent of the consolidated gross revenues of the holding*  
 24                 *company;*

1           “(3) the aggregate total assets of all companies  
2           the shares of which are held under this subsection do  
3           not exceed 5 percent of the holding company’s consoli-  
4           dated total assets;

5           “(4) the total capital invested in activities con-  
6           ducted under this subsection represents less than 5  
7           percent of the consolidated total capital of the holding  
8           company;

9           “(5) neither the Board nor the Secretary of the  
10          Treasury has determined that the activity is not fi-  
11          nancial in nature or incidental to financial activities  
12          under subsection (c);

13          “(6) the holding company is not required to pro-  
14          vide prior written notice of the transaction to the  
15          Board under subsection (c)(6); and

16          “(7) the holding company provides written noti-  
17          fication to the Board describing the activity com-  
18          menced or conducted by the company acquired no  
19          later than 10 business days after commencing the ac-  
20          tivity or consummating the acquisition.”.

21          (b) *FACTORS FOR CONSIDERATION IN REVIEWING AP-*  
22          *PLICATION BY FINANCIAL HOLDING COMPANY TO ACQUIRE*  
23          *BANK.*—Section 3(c) of the Bank Holding Company Act of  
24          1956 (12 U.S.C. 1842(c)) is amended by adding at the end  
25          the following new paragraph:

1           “(6) ‘*TOO BIG TO FAIL*’ *FACTOR*.—*In considering*  
 2           *an acquisition, merger, or consolidation under this*  
 3           *section involving a financial holding company or a*  
 4           *company that would be any such holding company*  
 5           *upon the consummation of the transaction, the Board*  
 6           *shall consider whether, and the extent to which, the*  
 7           *proposed acquisition, merger, or consolidation poses*  
 8           *an undue risk to the stability of the financial system*  
 9           *of the United States.*”.

10           (c) *TECHNICAL AND CONFORMING AMENDMENTS*.—

11                   (1) *Section 2 of the Bank Holding Company Act*  
 12           *of 1956 (12 U.S.C. 1841) is amended by adding at*  
 13           *the end the following new subsection:*

14           “(p) *INSURANCE COMPANY*.—*For purposes of sections*  
 15           *5, 6, and 10, the term ‘insurance company’ includes any*  
 16           *person engaged in the business of insurance to the extent*  
 17           *of such activities.*”.

18                   (2) *Section 4(j) of the Bank Holding Company*  
 19           *Act of 1956 (12 U.S.C. 1843(j)) is amended—*

20                           (A) *in paragraph (1)(A), by inserting “or*  
 21                           *in any complementary activity under section*  
 22                           *6(c)(1)(B)” after “subsection (c)(8) or (a)(2)”;*  
 23                           *and*

24                           (B) *in paragraph (3)—*

(i) by inserting “, other than any complementary activity under section 6(c)(1)(B),” after “to engage in any activity”; and

(ii) by inserting “or a company engaged in any complementary activity under section 6(c)(1)(B)” after “insured depository institution”.

(d) *REPORT.*—

(1) *IN GENERAL.*—By the end of the 4-year period beginning on the date of the enactment of this Act and every 4 years thereafter, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall submit a joint report to the Congress containing a summary of new activities which are financial in nature, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (c)(1) or (f) of section 6 of the Bank Holding Company Act of 1956 (as added by subsection (a)).

(2) *OTHER CONTENTS.*—Each report submitted to the Congress pursuant to paragraph (1) shall also contain the following:

(A) A discussion of actions by the Board of Governors of the Federal Reserve System and the

1        *Secretary of the Treasury, whether by regulation,*  
2        *order, interpretation, or guideline or by approval*  
3        *or disapproval of an application, with regard to*  
4        *activities of financial holding companies which*  
5        *are incidental to activities financial in nature or*  
6        *complementary to such financial activities.*

7                *(B) An analysis and discussion of the risks*  
8        *posed by commercial activities of financial hold-*  
9        *ing companies to the safety and soundness of af-*  
10       *filiate depository institutions.*

11               *(C) An analysis and discussion of the effect*  
12       *of mergers and acquisitions under section 6 of*  
13       *the Bank Holding Company Act of 1956 on mar-*  
14       *ket concentration in the financial services indus-*  
15       *try.*

16               *(D) An analysis and discussion, by the*  
17       *Board and the Secretary in consultation with*  
18       *the other Federal banking agencies (as defined in*  
19       *section 3(z) of the Federal Deposit Insurance*  
20       *Act), of the impact of the implementation of this*  
21       *Act, and the amendments made by this Act, on*  
22       *the extent of meeting community credit needs*  
23       *and capital availability under the Community*  
24       *Reinvestment Act of 1977.*

1 **SEC. 104. OPERATION OF STATE LAW.**

2 (a) *AFFILIATIONS.*—

3 (1) *IN GENERAL.*—*Except as provided in para-*  
 4 *graph (2), no State may, by statute, regulation, order,*  
 5 *interpretation, or other action, prevent or restrict an*  
 6 *insured depository institution or wholesale financial*  
 7 *institution, or a subsidiary or affiliate thereof, from*  
 8 *being affiliated directly or indirectly or associated*  
 9 *with any person or entity, as authorized or permitted*  
 10 *by this Act or any other provision of Federal law.*

11 (2) *INSURANCE.*—*With respect to affiliations be-*  
 12 *tween insured depository institutions or wholesale fi-*  
 13 *nancial institutions, or any subsidiary or affiliate*  
 14 *thereof, and persons or entities engaged in the busi-*  
 15 *ness of insurance, paragraph (1) does not prohibit—*

16 (A) *any State from requiring any person or*  
 17 *entity that proposes to acquire control of an en-*  
 18 *tity that is engaged in the business of insurance*  
 19 *and domiciled in that State (hereafter in this*  
 20 *subparagraph referred to as the “insurer”) to*  
 21 *furnish to the insurance regulatory authority of*  
 22 *that State, not later than 60 days before the ef-*  
 23 *fective date of the proposed acquisition—*

24 (i) *the name and address of each per-*  
 25 *son by whom, or on whose behalf, the affili-*  
 26 *ation referred to in this subparagraph is to*

1           *be effected (hereafter in this subparagraph*  
2           *referred to as the “acquiring party”);*

3           *(ii) if the acquiring party is an indi-*  
4           *vidual, his or her principal occupation and*  
5           *all offices and positions held during the 5*  
6           *years preceding the date of notification, and*  
7           *any conviction of crimes other than minor*  
8           *traffic violations during the 10 years pre-*  
9           *ceding the date of notification;*

10          *(iii) if the acquiring party is not an*  
11          *individual—*

12               *(I) a report of the nature of its*  
13               *business operations during the 5 years*  
14               *preceding the date of notification, or*  
15               *for such shorter period as such person*  
16               *and any predecessors thereof shall have*  
17               *been in existence;*

18               *(II) an informative description of*  
19               *the business intended to be done by the*  
20               *acquiring party and any subsidiary*  
21               *thereof; and*

22               *(III) a list of all individuals who*  
23               *are, or who have been selected to be-*  
24               *come, directors or executive officers of*  
25               *the acquiring party or who perform, or*

1                    *will perform, functions appropriate to*  
2                    *such positions, including, for each such*  
3                    *individual, the information required*  
4                    *by clause (ii);*

5                    *(iv) the source, nature, and amount of*  
6                    *the consideration used, or to be used, in ef-*  
7                    *fecting the merger or other acquisition of*  
8                    *control, a description of any transaction*  
9                    *wherein funds were, or are to be, obtained*  
10                  *for any such purpose, and the identity of*  
11                  *persons furnishing such consideration, ex-*  
12                  *cept that, if a source of such consideration*  
13                  *is a loan made in the lender's ordinary*  
14                  *course of business, the identity of the lender*  
15                  *shall remain confidential if the person fil-*  
16                  *ing such statement so requests;*

17                  *(v) fully audited financial information*  
18                  *as to the earnings and financial condition*  
19                  *of each acquiring party for the 5 fiscal*  
20                  *years preceding the date of notification of*  
21                  *each such acquiring party, or for such lesser*  
22                  *period as such acquiring party and any*  
23                  *predecessors thereof shall have been in exist-*  
24                  *ence, and similar unaudited information as*  
25                  *of a date not earlier than 90 days before the*



1           *date of notification, except that, in the case*  
2           *of an acquiring party that is an insurer ac-*  
3           *tively engaged in the business of insurance,*  
4           *the financial statements of such insurer*  
5           *need not be audited, but such audit may be*  
6           *required if the need therefor is determined*  
7           *by the insurance regulatory authority of the*  
8           *State;*

9                     *(vi) any plans or proposals that each*  
10           *acquiring party may have to liquidate such*  
11           *insurer, to sell its assets, or to merge or con-*  
12           *solidate it with any person or to make any*  
13           *other material change in its business or cor-*  
14           *porate structure or management;*

15                    *(vii) the number of shares of any secu-*  
16           *rity of the insurer that each acquiring*  
17           *party proposes to acquire, the terms of any*  
18           *offer, request, invitation, agreement, or ac-*  
19           *quisition, and a statement as to the method*  
20           *by which the fairness of the proposal was*  
21           *arrived at;*

22                    *(viii) the amount of each class of any*  
23           *security of the insurer that is beneficially*  
24           *owned or concerning which there is a right*

1           to acquire beneficial ownership by each ac-  
2           quiring party;

3           (ix) a full description of any contracts,  
4           arrangements, or understandings with re-  
5           spect to any security of the insurer in which  
6           any acquiring party is involved, including  
7           transfer of any of the securities, joint ven-  
8           tures, loan or option arrangements, puts or  
9           calls, guarantees of loans, guarantees  
10          against loss or guarantees of profits, divi-  
11          sion of losses or profits, or the giving or  
12          withholding of proxies, and identification of  
13          the persons with whom such contracts, ar-  
14          rangements, or understandings have been  
15          entered into;

16          (x) a description of the purchase of  
17          any security of the insurer during the 12-  
18          month period preceding the date of notifica-  
19          tion by any acquiring party, including the  
20          dates of purchase, names of the purchasers,  
21          and consideration paid, or agreed to be  
22          paid, therefor;

23          (xi) a description of any recommenda-  
24          tions to purchase any security of the insurer  
25          made during the 12-month period preceding

the date of notification by any acquiring party or by any person based upon interviews or at the suggestion of such acquiring party;

(xii) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the insurer and, if distributed, of additional soliciting material relating thereto; and

(xiii) the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(B) in the case of a person engaged in the business of insurance which is the subject of an acquisition or change or continuation in control, the State of domicile of such person from reviewing or taking action (including approval or disapproval) with regard to the acquisition or change or continuation in control, as long as the State reviews and actions—

1           (i) are completed by the end of the 60-  
2           day period beginning on the later of the  
3           date the State received notice of the pro-  
4           posed action or the date the State received  
5           the information required under State law  
6           regarding such acquisition or change or  
7           continuation in control;

8           (ii) do not have the effect of discrimi-  
9           nating, intentionally or unintentionally,  
10          against an insured depository institution or  
11          affiliate thereof or against any other person  
12          based upon affiliation with an insured de-  
13          pository institution; and

14          (iii) are based on standards or require-  
15          ments relating to solvency or managerial  
16          fitness;

17          (C) any State from requiring an entity that  
18          is acquiring control of an entity that is engaged  
19          in the business of insurance and domiciled in  
20          that State to maintain or restore the capital re-  
21          quirements of that insurance entity to the level  
22          required under the capital regulations of general  
23          applicability in that State to avoid the require-  
24          ment of preparing and filing with the insurance  
25          regulatory authority of that State a plan to in-

1       crease the capital of the entity, except that any  
2       determination by the State insurance regulatory  
3       authority with respect to such requirement shall  
4       be made not later than 60 days after the date of  
5       notification under subparagraph (A);

6               (D) any State from taking actions with re-  
7       spect to the receivership or conservatorship of  
8       any insurance company;

9               (E) any State from restricting a change in  
10      the ownership of stock in an insurance company,  
11      or a company formed for the purpose of control-  
12      ling such insurance company, for a period of not  
13      more than 3 years beginning on the date of the  
14      conversion of such company from mutual to stock  
15      form; or

16              (F) any State from requiring an organiza-  
17      tion which has been eligible at any time since  
18      January 1, 1987, to claim the special deduction  
19      provided by section 833 of the Internal Revenue  
20      Code of 1986 to meet certain conditions in order  
21      to undergo, as determined by the State, a reorga-  
22      nization, recapitalization, conversion, merger,  
23      consolidation, sale or other disposition of sub-  
24      stantial operating assets, demutualization, dis-  
25      solution, or to undertake other similar actions

1        *and which is governed under a State statute en-*  
 2        *acted on May 22, 1998, relating to hospital,*  
 3        *medical, and dental service corporation conver-*  
 4        *sions.*

5        (3) *PRESERVATION OF STATE ANTITRUST AND*  
 6        *GENERAL CORPORATE LAWS.—*

7                (A) *IN GENERAL.—Subject to subsection (c)*  
 8        *and the nondiscrimination provisions contained*  
 9        *in such subsection, no provision in paragraph*  
 10        *(1) shall be construed as affecting State laws,*  
 11        *regulations, orders, interpretations, or other ac-*  
 12        *tions of general applicability relating to the gov-*  
 13        *ernance of corporations, partnerships, limited li-*  
 14        *ability companies or other business associations*  
 15        *incorporated or formed under the laws of that*  
 16        *State or domiciled in that State, or the applica-*  
 17        *bility of the antitrust laws of any State or any*  
 18        *State law that is similar to the antitrust laws.*

19                (B) *DEFINITION.—The term “antitrust*  
 20        *laws” has the same meaning as in subsection (a)*  
 21        *of the first section of the Clayton Act, and in-*  
 22        *cludes section 5 of the Federal Trade Commis-*  
 23        *sion Act to the extent that such section 5 relates*  
 24        *to unfair methods of competition.*

25        (b) *ACTIVITIES.—*

1           (1) *IN GENERAL.*—*Except as provided in para-*  
 2           *graph (3), and except with respect to insurance sales,*  
 3           *solicitation, and cross marketing activities, which*  
 4           *shall be governed by paragraph (2), no State may, by*  
 5           *statute, regulation, order, interpretation, or other ac-*  
 6           *tion, prevent or restrict an insured depository institu-*  
 7           *tion, wholesale financial institution, or subsidiary or*  
 8           *affiliate thereof from engaging directly or indirectly,*  
 9           *either by itself or in conjunction with a subsidiary,*  
 10          *affiliate, or any other entity or person, in any activ-*  
 11          *ity authorized or permitted under this Act.*

12           (2) *INSURANCE SALES.*—

13           (A) *IN GENERAL.*—*In accordance with the*  
 14           *legal standards for preemption set forth in the*  
 15           *decision of the Supreme Court of the United*  
 16           *States in Barnett Bank of Marion County N.A.*  
 17           *v. Nelson, 517 U.S. 25 (1996), no State may, by*  
 18           *statute, regulation, order, interpretation, or other*  
 19           *action, prevent or significantly interfere with the*  
 20           *ability of an insured depository institution or*  
 21           *wholesale financial institution, or a subsidiary*  
 22           *or affiliate thereof, to engage, directly or indi-*  
 23           *rectly, either by itself or in conjunction with a*  
 24           *subsidiary, affiliate, or any other party, in any*

1        *insurance sales, solicitation, or cross-marketing*  
 2        *activity.*

3                (B) *CERTAIN STATE LAWS PRESERVED.*—

4        *Notwithstanding subparagraph (A), a State may*  
 5        *impose any of the following restrictions, or re-*  
 6        *strictions which are substantially the same as*  
 7        *but no more burdensome or restrictive than those*  
 8        *in each of the following clauses:*

9                (i) *Restrictions prohibiting the rejec-*  
 10        *tion of an insurance policy by an insured*  
 11        *depository institution, wholesale financial*  
 12        *institution, or any subsidiary or affiliate*  
 13        *thereof, solely because the policy has been*  
 14        *issued or underwritten by any person who*  
 15        *is not associated with such insured deposi-*  
 16        *tory institution or wholesale financial insti-*  
 17        *tution, or any subsidiary or affiliate there-*  
 18        *of, when such insurance is required in con-*  
 19        *nection with a loan or extension of credit.*

20                (ii) *Restrictions prohibiting a require-*  
 21        *ment for any debtor, insurer, or insurance*  
 22        *agent or broker to pay a separate charge in*  
 23        *connection with the handling of insurance*  
 24        *that is required in connection with a loan*  
 25        *or other extension of credit or the provision*



1           *of another traditional banking product by*  
2           *an insured depository institution, wholesale*  
3           *financial institution, or any subsidiary or*  
4           *affiliate thereof, unless such charge would be*  
5           *required when the insured depository insti-*  
6           *tution or wholesale financial institution, or*  
7           *any subsidiary or affiliate thereof, is the li-*  
8           *censed insurance agent or broker providing*  
9           *the insurance.*

10           *(iii) Restrictions prohibiting the use of*  
11           *any advertisement or other insurance pro-*  
12           *motional material by an insured depository*  
13           *institution or wholesale financial institu-*  
14           *tion, or any subsidiary or affiliate thereof,*  
15           *that would cause a reasonable person to be-*  
16           *lieve mistakenly that—*

17                   *(I) a State or the Federal Govern-*  
18                   *ment is responsible for the insurance*  
19                   *sales activities of, or stands behind the*  
20                   *credit of, the institution, affiliate, or*  
21                   *subsidiary; or*

22                   *(II) a State, or the Federal Gov-*  
23                   *ernment guarantees any returns on in-*  
24                   *surance products, or is a source of pay-*  
25                   *ment on any insurance obligation of or*

1                   *sold by the institution, affiliate, or*  
2                   *subsidiary;*

3                   *(iv) Restrictions prohibiting the pay-*  
4                   *ment or receipt of any commission or bro-*  
5                   *kerage fee or other valuable consideration*  
6                   *for services as an insurance agent or broker*  
7                   *to or by any person, unless such person*  
8                   *holds a valid State license regarding the ap-*  
9                   *plicable class of insurance at the time at*  
10                  *which the services are performed, except*  
11                  *that, in this clause, the term “services as an*  
12                  *insurance agent or broker” does not include*  
13                  *a referral by an unlicensed person of a cus-*  
14                  *tomers or potential customer to a licensed*  
15                  *insurance agent or broker that does not in-*  
16                  *clude a discussion of specific insurance pol-*  
17                  *icy terms and conditions.*

18                  *(v) Restrictions prohibiting any com-*  
19                  *pensation paid to or received by any indi-*  
20                  *vidual who is not licensed to sell insurance,*  
21                  *for the referral of a customer that seeks to*  
22                  *purchase, or seeks an opinion or advice on,*  
23                  *any insurance product to a person that sells*  
24                  *or provides opinions or advice on such*

1           *product, based on the purchase of insurance*  
2           *by the customer.*

3           *(vi) Restrictions prohibiting the release*  
4           *of the insurance information of a customer*  
5           *(defined as information concerning the pre-*  
6           *miums, terms, and conditions of insurance*  
7           *coverage, including expiration dates and*  
8           *rates, and insurance claims of a customer*  
9           *contained in the records of the insured de-*  
10          *pository institution or wholesale financial*  
11          *institution, or a subsidiary or affiliate*  
12          *thereof) to any person or entity other than*  
13          *an officer, director, employee, agent, sub-*  
14          *subsidiary, or affiliate of an insured depository*  
15          *institution or a wholesale financial institu-*  
16          *tion, for the purpose of soliciting or selling*  
17          *insurance, without the express consent of the*  
18          *customer, other than a provision that*  
19          *prohibits—*

20                 *(I) a transfer of insurance infor-*  
21                 *mation to an unaffiliated insurance*  
22                 *company, agent, or broker in connec-*  
23                 *tion with transferring insurance in*  
24                 *force on existing insureds of the in-*  
25                 *sured depository institution or whole-*

1           *sale financial institution, or sub-*  
2           *subsidiary or affiliate thereof, or in con-*  
3           *nection with a merger with or acquisi-*  
4           *tion of an unaffiliated insurance com-*  
5           *pany, agent, or broker; or*

6                   *(II) the release of information as*  
7           *otherwise authorized by State or Fed-*  
8           *eral law.*

9           *(vii) Restrictions prohibiting the use of*  
10          *health information obtained from the insur-*  
11          *ance records of a customer for any purpose,*  
12          *other than for its activities as a licensed*  
13          *agent or broker, without the express consent*  
14          *of the customer.*

15           *(viii) Restrictions prohibiting the ex-*  
16          *tension of credit or any product or service*  
17          *that is equivalent to an extension of credit,*  
18          *lease or sale of property of any kind, or fur-*  
19          *nishing of any services or fixing or varying*  
20          *the consideration for any of the foregoing,*  
21          *on the condition or requirement that the*  
22          *customer obtain insurance from an insured*  
23          *depository institution, wholesale financial*  
24          *institution, a subsidiary or affiliate thereof,*  
25          *or a particular insurer, agent, or broker,*

1           *other than a prohibition that would prevent*  
2           *any insured depository institution or whole-*  
3           *sale financial institution, or any subsidiary*  
4           *or affiliate thereof—*

5                     *(I) from engaging in any activity*  
6                     *described in this clause that would not*  
7                     *violate section 106 of the Bank Hold-*  
8                     *ing Company Act Amendments of*  
9                     *1970, as interpreted by the Board of*  
10                    *Governors of the Federal Reserve Sys-*  
11                    *tem; or*

12                    *(II) from informing a customer or*  
13                    *prospective customer that insurance is*  
14                    *required in order to obtain a loan or*  
15                    *credit, that loan or credit approval is*  
16                    *contingent upon the procurement by*  
17                    *the customer of acceptable insurance,*  
18                    *or that insurance is available from the*  
19                    *insured depository institution or*  
20                    *wholesale financial institution, or any*  
21                    *subsidiary or affiliate thereof.*

22                    *(ix) Restrictions requiring, when an*  
23                    *application by a consumer for a loan or*  
24                    *other extension of credit from an insured*  
25                    *depository institution or wholesale financial*

1            *institution is pending, and insurance is of-*  
2            *fered or sold to the consumer or is required*  
3            *in connection with the loan or extension of*  
4            *credit by the insured depository institution*  
5            *or wholesale financial institution or any af-*  
6            *filiate or subsidiary thereof, that a written*  
7            *disclosure be provided to the consumer or*  
8            *prospective customer indicating that his or*  
9            *her choice of an insurance provider will not*  
10           *affect the credit decision or credit terms in*  
11           *any way, except that the insured depository*  
12           *institution or wholesale financial institu-*  
13           *tion may impose reasonable requirements*  
14           *concerning the creditworthiness of the insur-*  
15           *ance provider and scope of coverage chosen.*

16           *(x) Restrictions requiring clear and*  
17           *conspicuous disclosure, in writing, where*  
18           *practicable, to the customer prior to the sale*  
19           *of any insurance policy that such policy—*

20                    *(I) is not a deposit;*

21                    *(II) is not insured by the Federal*  
22                    *Deposit Insurance Corporation;*

23                    *(III) is not guaranteed by the in-*  
24                    *sured depository institution or whole-*  
25                    *sale financial institution or, if appro-*

1            *priate, its subsidiaries or affiliates or*  
2            *any person soliciting the purchase of*  
3            *or selling insurance on the premises*  
4            *thereof; and*

5            *(IV) where appropriate, involves*  
6            *investment risk, including potential*  
7            *loss of principal.*

8            *(xi) Restrictions requiring that, when*  
9            *a customer obtains insurance (other than*  
10           *credit insurance or flood insurance) and*  
11           *credit from an insured depository institu-*  
12           *tion or wholesale financial institution, or*  
13           *its subsidiaries or affiliates, or any person*  
14           *soliciting the purchase of or selling insur-*  
15           *ance on the premises thereof, the credit and*  
16           *insurance transactions be completed through*  
17           *separate documents.*

18           *(xii) Restrictions prohibiting, when a*  
19           *customer obtains insurance (other than*  
20           *credit insurance or flood insurance) and*  
21           *credit from an insured depository institu-*  
22           *tion or wholesale financial institution or its*  
23           *subsidiaries or affiliates, or any person so-*  
24           *liciting the purchase of or selling insurance*  
25           *on the premises thereof, inclusion of the ex-*

1            *pense of insurance premiums in the pri-*  
 2            *mary credit transaction without the express*  
 3            *written consent of the customer.*

4            *(xiii) Restrictions requiring mainte-*  
 5            *nance of separate and distinct books and*  
 6            *records relating to insurance transactions,*  
 7            *including all files relating to and reflecting*  
 8            *consumer complaints, and requiring that*  
 9            *such insurance books and records be made*  
 10           *available to the appropriate State insurance*  
 11           *regulator for inspection upon reasonable no-*  
 12           *tice.*

13           *(C) LIMITATIONS.—*

14           *(i) OCC DEFERENCE.—Section 306(e)*  
 15           *does not apply with respect to any State*  
 16           *statute, regulation, order, interpretation, or*  
 17           *other action regarding insurance sales, so-*  
 18           *licitation, or cross marketing activities de-*  
 19           *scribed in subparagraph (A) that was*  
 20           *issued, adopted, or enacted before September*  
 21           *3, 1998, and that is not described in sub-*  
 22           *paragraph (B).*

23           *(ii) NONDISCRIMINATION.—Subsection*  
 24           *(c) does not apply with respect to any State*  
 25           *statute, regulation, order, interpretation, or*



1            *other action regarding insurance sales, so-*  
 2            *licitation, or cross marketing activities de-*  
 3            *scribed in subparagraph (A) that was*  
 4            *issued, adopted, or enacted before September*  
 5            *3, 1998, and that is not described in sub-*  
 6            *paragraph (B).*

7            (iii) *CONSTRUCTION.*—*Nothing in this*  
 8            *paragraph shall be construed to limit the*  
 9            *applicability of the decision of the Supreme*  
 10           *Court in Barnett Bank of Marion County*  
 11           *N.A. v. Nelson, 116 S. Ct. 1103 (1996) with*  
 12           *respect to a State statute, regulation, order,*  
 13           *interpretation, or other action that is not*  
 14           *described in subparagraph (B).*

15           (iv) *LIMITATION ON INFERENCES.*—  
 16           *Nothing in this paragraph shall be con-*  
 17           *strued to create any inference with respect*  
 18           *to any State statute, regulation, order, in-*  
 19           *terpretation, or other action that is not re-*  
 20           *ferred to or described in this paragraph.*

21           (3) *INSURANCE ACTIVITIES OTHER THAN*  
 22           *SALES.*—*State statutes, regulations, interpretations,*  
 23           *orders, and other actions shall not be preempted*  
 24           *under subsection (b)(1) to the extent that they—*

1           (A) relate to, or are issued, adopted, or en-  
 2           acted for the purpose of regulating the business  
 3           of insurance in accordance with the Act of March  
 4           9, 1945 (commonly known as the “McCarran-  
 5           Ferguson Act”);

6           (B) apply only to persons or entities that  
 7           are not insured depository institutions or whole-  
 8           sale financial institutions, but that are directly  
 9           engaged in the business of insurance (except that  
 10          they may apply to depository institutions en-  
 11          gaged in providing savings bank life insurance  
 12          as principal to the extent of regulating such in-  
 13          surance);

14          (C) do not relate to or directly or indirectly  
 15          regulate insurance sales, solicitations, or cross-  
 16          marketing activities; and

17          (D) are not prohibited under subsection (c).

18          (4) *FINANCIAL ACTIVITIES OTHER THAN INSUR-*  
 19          *ANCE.*—No State statute, regulation, interpretation,  
 20          order, or other action shall be preempted under sub-  
 21          section (b)(1) to the extent that—

22               (A) it does not relate to, and is not issued  
 23               and adopted, or enacted for the purpose of regu-  
 24               lating, directly or indirectly, insurance sales, so-

1        *licitations, or cross marketing activities covered*  
2        *under paragraph (2);*

3                *(B) it does not relate to, and is not issued*  
4        *and adopted, or enacted for the purpose of regu-*  
5        *lating, directly or indirectly, the business of in-*  
6        *surance activities other than sales, solicitations,*  
7        *or cross marketing activities, covered under*  
8        *paragraph (3);*

9                *(C) it does not relate to securities investiga-*  
10        *tions or enforcement actions referred to in sub-*  
11        *section (d); and*

12                *(D) it—*

13                        *(i) does not distinguish by its terms be-*  
14        *tween insured depository institutions,*  
15        *wholesale financial institutions, and sub-*  
16        *sidaries and affiliates thereof engaged in*  
17        *the activity at issue and other persons or*  
18        *entities engaged in the same activity in a*  
19        *manner that is in any way adverse with re-*  
20        *spect to the conduct of the activity by any*  
21        *such insured depository institution, whole-*  
22        *sale financial institution, or subsidiary or*  
23        *affiliate thereof engaged in the activity at*  
24        *issue;*

1                   (ii) as interpreted or applied, does not  
 2                   have, and will not have, an impact on de-  
 3                   pository institutions, wholesale financial in-  
 4                   stitutions, or subsidiaries or affiliates there-  
 5                   of engaged in the activity at issue, or any  
 6                   person or entity affiliated therewith, that is  
 7                   substantially more adverse than its impact  
 8                   on other persons or entities engaged in the  
 9                   same activity that are not insured deposi-  
 10                  tory institutions, wholesale financial insti-  
 11                  tutions, or subsidiaries or affiliates thereof,  
 12                  or persons or entities affiliated therewith;

13                  (iii) does not effectively prevent a de-  
 14                  pository institution, wholesale financial in-  
 15                  stitution, or subsidiary or affiliate thereof  
 16                  from engaging in activities authorized or  
 17                  permitted by this Act or any other provi-  
 18                  sion of Federal law; and

19                  (iv) does not conflict with the intent of  
 20                  this Act generally to permit affiliations that  
 21                  are authorized or permitted by Federal law.

22           (c) *NONDISCRIMINATION*.—Except as provided in any  
 23           restrictions described in subsection (b)(2)(B), no State may,  
 24           by statute, regulation, order, interpretation, or other action,  
 25           regulate the insurance activities authorized or permitted

1 *under this Act or any other provision of Federal law of an*  
2 *insured depository institution or wholesale financial insti-*  
3 *tution, or subsidiary or affiliate thereof, to the extent that*  
4 *such statute, regulation, order, interpretation, or other*  
5 *action—*

6           (1) *distinguishes by its terms between insured*  
7 *depository institutions or wholesale financial institu-*  
8 *tions, or subsidiaries or affiliates thereof, and other*  
9 *persons or entities engaged in such activities, in a*  
10 *manner that is in any way adverse to any such in-*  
11 *sured depository institution or wholesale financial in-*  
12 *stitution, or subsidiary or affiliate thereof;*

13           (2) *as interpreted or applied, has or will have an*  
14 *impact on depository institutions or wholesale finan-*  
15 *cial institutions, or subsidiaries or affiliates thereof,*  
16 *that is substantially more adverse than its impact on*  
17 *other persons or entities providing the same products*  
18 *or services or engaged in the same activities that are*  
19 *not insured depository institutions, wholesale finan-*  
20 *cial institutions, or subsidiaries or affiliates thereof,*  
21 *or persons or entities affiliated therewith;*

22           (3) *effectively prevents a depository institution*  
23 *or wholesale financial institution, or subsidiary or af-*  
24 *filiate thereof, from engaging in insurance activities*

1        *authorized or permitted by this Act or any other pro-*  
 2        *vision of Federal law; or*

3            *(4) conflicts with the intent of this Act generally*  
 4        *to permit affiliations that are authorized or permitted*  
 5        *by Federal law between insured depository institu-*  
 6        *tions or wholesale financial institutions, or subsidi-*  
 7        *aries or affiliates thereof, and persons and entities en-*  
 8        *gaged in the business of insurance.*

9        *(d) LIMITATION.—Subsections (a) and (b) shall not be*  
 10       *construed to affect the jurisdiction of the securities commis-*  
 11       *sion (or any agency or office performing like functions) of*  
 12       *any State, under the laws of such State—*

13           *(1) to investigate and bring enforcement actions,*  
 14        *consistent with section 18(c) of the Securities Act of*  
 15        *1933, with respect to fraud or deceit or unlawful con-*  
 16        *duct by any person, in connection with securities or*  
 17        *securities transactions; or*

18           *(2) to require the registration of securities or the*  
 19        *licensure or registration of brokers, dealers, or invest-*  
 20        *ment advisers (consistent with section 203A of the In-*  
 21        *vestment Advisers Act of 1940), or the associated per-*  
 22        *sons of a broker, dealer, or investment adviser (con-*  
 23        *sistent with such section 203A).*

24        *(e) DEFINITIONS.—For purposes of this section, the fol-*  
 25       *lowing definitions shall apply:*

1           (1) *INSURED DEPOSITORY INSTITUTION.*—The  
 2       term “insured depository institution” includes any  
 3       foreign bank that maintains a branch, agency, or  
 4       commercial lending company in the United States.

5           (2) *STATE.*—The term “State” means any State  
 6       of the United States, the District of Columbia, any  
 7       territory of the United States, Puerto Rico, Guam,  
 8       American Samoa, the Trust Territory of the Pacific  
 9       Islands, the Virgin Islands, and the Northern Mar-  
 10      iana Islands.

11 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**  
 12                                   **IZED.**

13       Section 3(g)(2) of the Bank Holding Company Act of  
 14   1956 (12 U.S.C. 1842(g)(2)) is amended to read as follows:

15           “(2) *REGULATIONS.*—A bank holding company  
 16       organized as a mutual holding company shall be reg-  
 17       ulated on terms, and shall be subject to limitations,  
 18       comparable to those applicable to any other bank  
 19       holding company.”.

20 **SEC. 105A. PUBLIC MEETINGS FOR LARGE BANK ACQUISI-**  
 21                                   **TIONS AND MERGERS.**

22       (a) *BANK HOLDING COMPANY ACT OF 1956.*—Section  
 23   3(c)(2) of the Bank Holding Company Act of 1956 (12  
 24   U.S.C. 1842(c)(2)) is amended—

1           (1) *by striking “FACTORS.—In every case” and*  
 2           *inserting “FACTORS.—*

3                     *“(A) IN GENERAL.—In every case”; and*

4           (2) *by adding at the end the following new sub-*  
 5           *paragraph:*

6                     *“(B) PUBLIC MEETINGS.—In each case in-*  
 7                     *volving one or more insured depository institu-*  
 8                     *tions each of which has total assets of*  
 9                     *\$1,000,000,000 or more, the Board shall, as nec-*  
 10                    *essary and on a timely basis, conduct public*  
 11                    *meetings in one or more areas where the Board*  
 12                    *believes, in the sole discretion of the Board, there*  
 13                    *will be a substantial public impact.”.*

14           (b) *FEDERAL DEPOSIT INSURANCE ACT.—Section*  
 15           *18(c) of the Federal Deposit Insurance Act (12 U.S.C.*  
 16           *1828(c)) is amended by adding at the end the following new*  
 17           *paragraph:*

18                    *“(12) PUBLIC MEETINGS.—In each merger transaction*  
 19                    *involving one or more insured depository institutions each*  
 20                    *of which has total assets of \$1,000,000,000 or more, the re-*  
 21                    *sponsible agency shall, as necessary and on a timely basis,*  
 22                    *conduct public meetings in one or more areas where the*  
 23                    *agency believes, in the sole discretion of the agency, there*  
 24                    *will be a substantial public impact.”.*



1       (c) *NATIONAL BANK CONSOLIDATION AND MERGER*  
 2 *ACT.*—*The National Bank Consolidation and Merger Act*  
 3 *(12 U.S.C. 215 et seq.) is amended by adding at the end*  
 4 *the following new section:*

5       **“SEC. 6. PUBLIC MEETINGS FOR LARGE BANK CONSOLIDA-**  
 6                               **TIONS AND MERGERS.**

7       *“In each case of a consolidation or merger under this*  
 8 *Act involving one or more banks each of which has total*  
 9 *assets of \$1,000,000,000 or more, the Comptroller shall, as*  
 10 *necessary and on a timely basis, conduct public meetings*  
 11 *in one or more areas where the Comptroller believes, in the*  
 12 *sole discretion of the Comptroller, there will be a substantial*  
 13 *public impact.”.*

14       (d) *HOME OWNERS’ LOAN ACT.*—*Section 10(e) of the*  
 15 *Home Owners’ Loan Act (12 U.S.C. 1463) is amended by*  
 16 *adding at the end the following new paragraph:*

17               **“(7) PUBLIC MEETINGS FOR LARGE DEPOSITORY**  
 18       **INSTITUTION ACQUISITIONS AND MERGERS.**—*In each*  
 19 *case involving one or more insured depository institu-*  
 20 *tions each of which has total assets of \$1,000,000,000*  
 21 *or more, the Director shall, as necessary and on a*  
 22 *timely basis, conduct public meetings in one or more*  
 23 *areas where the Director believes, in the sole discre-*  
 24 *tion of the Director, there will be a substantial public*  
 25 *impact.”.*

1 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**  
 2 **FICES.**

3 (a) *IN GENERAL.*—Section 109(d) of the Riegle-Neal  
 4 *Interstate Banking and Branching Efficiency Act of 1994*  
 5 *(12 U.S.C. 1835a(d))* is amended—

6 (1) by inserting “, the *Financial Services Act of*  
 7 *1999*,” after “pursuant to this title”; and

8 (2) by inserting “or such Act” after “made by  
 9 this title”.

10 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—Sec-  
 11 *tion 109(e)(4) of the Riegle-Neal Interstate Banking and*  
 12 *Branching Efficiency Act of 1994 (12 U.S.C. 1835a(e)(4))*  
 13 *is amended by inserting “and any branch of a bank con-*  
 14 *trolled by an out-of-State bank holding company (as defined*  
 15 *in section 2(o)(7) of the Bank Holding Company Act of*  
 16 *1956)” before the period.*

17 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**  
 18 **MENTS.**

19 Section 42(d)(4)(A) of the *Federal Deposit Insurance*  
 20 *Act (12 U.S.C. 1831r–1(d)(4)(A))* is amended by inserting  
 21 “and any bank controlled by an out-of-State bank holding  
 22 company (as defined in section 2(o)(7) of the *Bank Holding*  
 23 *Company Act of 1956)*” before the period.

1 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**

2 **BANKS.**

3 (a) *IN GENERAL.*—Section 4(f) of the Bank Holding  
4 Company Act of 1956 (12 U.S.C. 1843(f)) is amended—

5 (1) in paragraph (2)(A)(ii)—

6 (A) by striking “and” at the end of sub-  
7 clause (IX);

8 (B) by inserting “and” after the semicolon  
9 at the end of subclause (X); and

10 (C) by inserting after subclause (X) the fol-  
11 lowing new subclause:

12 “(XI) assets that are derived from,  
13 or are incidental to, consumer lending  
14 activities in which institutions de-  
15 scribed in subparagraph (F) or (H) of  
16 section 2(c)(2) are permitted to en-  
17 gage,”;

18 (2) in paragraph (2), by striking subparagraph  
19 (B) and inserting the following new subparagraphs:

20 “(B) any bank subsidiary of such company  
21 engages in any activity in which the bank was  
22 not lawfully engaged as of March 5, 1987, unless  
23 the bank is well managed and well capitalized;

24 “(C) any bank subsidiary of such company  
25 both—

1                   “(i) accepts demand deposits or depos-  
 2                   its that the depositor may withdraw by  
 3                   check or similar means for payment to  
 4                   third parties; and

5                   “(ii) engages in the business of making  
 6                   commercial loans (and, for purposes of this  
 7                   clause, loans made in the ordinary course of  
 8                   a credit card operation shall not be treated  
 9                   as commercial loans); or

10                  “(D) after the date of the enactment of the  
 11                  Competitive Equality Amendments of 1987, any  
 12                  bank subsidiary of such company permits any  
 13                  overdraft (including any intraday overdraft), or  
 14                  incurs any such overdraft in such bank’s account  
 15                  at a Federal Reserve bank, on behalf of an affil-  
 16                  iate, other than an overdraft described in para-  
 17                  graph (3).”; and

18                  (3) by striking paragraphs (3) and (4) and in-  
 19                  serting the following new paragraphs:

20                  “(3) *PERMISSIBLE OVERDRAFTS DESCRIBED.—*  
 21                  *For purposes of paragraph (2)(D), an overdraft is de-*  
 22                  *scribed in this paragraph if—*

23                         “(A) such overdraft results from an inad-  
 24                         vertent computer or accounting error that is be-

1           yond the control of both the bank and the affil-  
2           iate;

3           “(B) such overdraft—

4                 “(i) is permitted or incurred on behalf  
5                 of an affiliate which is monitored by, re-  
6                 ports to, and is recognized as a primary  
7                 dealer by the Federal Reserve Bank of New  
8                 York; and

9                 “(ii) is fully secured, as required by  
10                the Board, by bonds, notes, or other obliga-  
11                tions which are direct obligations of the  
12                United States or on which the principal  
13                and interest are fully guaranteed by the  
14                United States or by securities and obliga-  
15                tions eligible for settlement on the Federal  
16                Reserve book entry system; or

17           “(C) such overdraft—

18                 “(i) is incurred on behalf of an affil-  
19                 iate solely in connection with an activity  
20                 that is so closely related to banking, or  
21                 managing or controlling banks, as to be a  
22                 proper incident thereto, to the extent the  
23                 bank incurring the overdraft and the affil-  
24                 iate on whose behalf the overdraft is in-

1            *incurred each document that the overdraft is*  
 2            *incurred for such purpose; and*

3            *“(ii) does not cause the bank to violate*  
 4            *any provision of section 23A or 23B of the*  
 5            *Federal Reserve Act, either directly, in the*  
 6            *case of a member bank, or by virtue of sec-*  
 7            *tion 18(j) of the Federal Deposit Insurance*  
 8            *Act, in the case of a nonmember bank.*

9            *“(4) DIVESTITURE IN CASE OF LOSS OF EXEMP-*  
 10          *TION.—If any company described in paragraph (1)*  
 11          *fails to qualify for the exemption provided under such*  
 12          *paragraph by operation of paragraph (2), such ex-*  
 13          *emption shall cease to apply to such company and*  
 14          *such company shall divest control of each bank it con-*  
 15          *trols before the end of the 180-day period beginning*  
 16          *on the date that the company receives notice from the*  
 17          *Board that the company has failed to continue to*  
 18          *qualify for such exemption, unless before the end of*  
 19          *such 180-day period, the company has—*

20            *“(A) corrected the condition or ceased the*  
 21            *activity that caused the company to fail to con-*  
 22            *tinue to qualify for the exemption; and*

23            *“(B) implemented procedures that are rea-*  
 24            *sonably adapted to avoid the reoccurrence of such*  
 25            *condition or activity.*

1       *The issuance of any notice under this paragraph that*  
 2       *relates to the activities of a bank shall not be con-*  
 3       *strued as affecting the authority of the bank to con-*  
 4       *tinue to engage in such activities until the expiration*  
 5       *of such 180-day period.”.*

6       (b) *INDUSTRIAL LOAN COMPANIES AFFILIATE OVER-*  
 7       *DRAFTS.—Section 2(c)(2)(H) of the Bank Holding Com-*  
 8       *pany Act of 1956 (12 U.S.C. 1841(c)(2)(H)) is amended*  
 9       *by inserting before the period at the end “, or that is other-*  
 10       *wise permissible for a bank controlled by a company de-*  
 11       *scribed in section 4(f)(1)”.*

12       **SEC. 109. GAO STUDY OF ECONOMIC IMPACT ON COMMU-**  
 13                       **NITY BANKS, OTHER SMALL FINANCIAL INSTI-**  
 14                       **TUTIONS, INSURANCE AGENTS, AND CON-**  
 15                       **SUMERS.**

16       (a) *STUDY REQUIRED.—The Comptroller General of*  
 17       *the United States shall conduct a study of the projected eco-*  
 18       *nomie impact and the actual economic impact that the en-*  
 19       *actment of this Act will have on financial institutions, in-*  
 20       *cluding community banks, registered brokers and dealers*  
 21       *and insurance companies, which have total assets of*  
 22       *\$100,000,000 or less, insurance agents, and consumers.*

23       (b) *REPORTS TO THE CONGRESS.—*

24               (1) *IN GENERAL.—The Comptroller General of*  
 25       *the United States shall submit reports to the Con-*

gress, at the times required under paragraph (2), containing the findings and conclusions of the Comptroller General with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

(2) *TIMING OF REPORTS.*—The Comptroller General shall submit—

(A) an interim report before the end of the 6-month period beginning after the date of the enactment of this Act;

(B) another interim report before the end of the next 6-month period; and

(C) a final report before the end of the 1-year period after such second 6-month period.”.

**SEC. 110. RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES.**

(a) *STUDY.*—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act), shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977, including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act.



1       (b) *REPORT.*—Before the end of the 2-year period be-  
 2       ginning on the date of the enactment of this Act, the Sec-  
 3       retary of the Treasury, in consultation with the Federal  
 4       banking agencies, shall submit a report to the Congress on  
 5       the study conducted pursuant to subsection (a) and shall  
 6       include such recommendations as the Secretary determines  
 7       to be appropriate for administrative and legislative action  
 8       with respect to institutions covered under the Community  
 9       Reinvestment Act of 1977.

10   **SEC. 110A. STUDY OF FINANCIAL MODERNIZATION'S AF-**  
 11                           **FECTION ON THE ACCESSIBILITY OF SMALL BUSI-**  
 12                           **NESS AND FARM LOANS.**

13       (a) *STUDY.*—The Secretary of the Treasury, in con-  
 14       sultation with the Federal banking agencies (as defined in  
 15       Section 3(z) of the Federal Deposit Insurance Act), shall  
 16       conduct a study of the extent to which credit is being pro-  
 17       vided to and for small business and farms, as a result of  
 18       this Act.

19       (b) *REPORT.*—Before the end of the 5-year period be-  
 20       ginning on the date of the enactment of this Act, the Sec-  
 21       retary, in consultation with the Federal banking agencies,  
 22       shall submit a report to the Congress on the study conducted  
 23       pursuant to subsection (a) and shall include such rec-  
 24       ommendations as the Secretary determines to be appro-  
 25       priate for administrative and legislative action.

1 ***Subtitle B—Streamlining Super-***  
 2 ***vision of Financial Holding***  
 3 ***Companies***

4 ***SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY***  
 5 ***SUPERVISION.***

6 *Section 5(c) of the Bank Holding Company Act of*  
 7 *1956 (12 U.S.C. 1844(c)) is amended to read as follows:*

8 *“(c) REPORTS AND EXAMINATIONS.—*

9 *“(1) REPORTS.—*

10 *“(A) IN GENERAL.—The Board from time to*  
 11 *time may require any bank holding company*  
 12 *and any subsidiary of such company to submit*  
 13 *reports under oath to keep the Board informed as*  
 14 *to—*

15 *“(i) its financial condition, systems for*  
 16 *monitoring and controlling financial and*  
 17 *operating risks, and transactions with de-*  
 18 *pository institution subsidiaries of the hold-*  
 19 *ing company; and*

20 *“(ii) compliance by the company or*  
 21 *subsidiary with applicable provisions of*  
 22 *this Act.*

23 *“(B) USE OF EXISTING REPORTS.—*

24 *“(i) IN GENERAL.—The Board shall, to*  
 25 *the fullest extent possible, accept reports in*

1           *fulfillment of the Board’s reporting require-*  
2           *ments under this paragraph that a bank*  
3           *holding company or any subsidiary of such*  
4           *company has provided or been required to*  
5           *provide to other Federal and State super-*  
6           *visors or to appropriate self-regulatory or-*  
7           *ganizations.*

8           “(ii) *AVAILABILITY.—A bank holding*  
9           *company or a subsidiary of such company*  
10          *shall provide to the Board, at the request of*  
11          *the Board, a report referred to in clause (i).*

12          “(iii) *REQUIRED USE OF PUBLICLY*  
13          *REPORTED INFORMATION.—The Board*  
14          *shall, to the fullest extent possible, accept in*  
15          *fulfillment of any reporting or record-*  
16          *keeping requirements under this Act infor-*  
17          *mation that is otherwise required to be re-*  
18          *ported publicly and externally audited fi-*  
19          *nancial statements.*

20          “(iv) *REPORTS FILED WITH OTHER*  
21          *AGENCIES.—In the event the Board requires*  
22          *a report from a functionally regulated non-*  
23          *depository institution subsidiary of a bank*  
24          *holding company of a kind that is not re-*  
25          *quired by another Federal or State regu-*

lator or appropriate self-regulatory organization, the Board shall request that the appropriate regulator or self-regulatory organization obtain such report. If the report is not made available to the Board, and the report is necessary to assess a material risk to the bank holding company or any of its subsidiary depository institutions or compliance with this Act, the Board may require such subsidiary to provide such a report to the Board.

“(C) *DEFINITION.*—For purposes of this subsection, the term ‘functionally regulated non-depository institution’ means—

“(i) a broker or dealer registered under the Securities Exchange Act of 1934;

“(ii) an investment adviser registered under the Investment Advisers Act of 1940, or with any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

“(iii) an insurance company subject to supervision by a State insurance commission, agency, or similar authority; and

1           “(iv) *an entity subject to regulation by*  
 2           *the Commodity Futures Trading Commis-*  
 3           *sion, with respect to the commodities activi-*  
 4           *ties of such entity and activities incidental*  
 5           *to such commodities activities.*

6           “(2) *EXAMINATIONS.—*

7           “(A) *EXAMINATION AUTHORITY.—*

8           “(i) *IN GENERAL.—The Board may*  
 9           *make examinations of each bank holding*  
 10           *company and each subsidiary of a bank*  
 11           *holding company.*

12           “(ii) *FUNCTIONALLY REGULATED NON-*  
 13           *DEPOSITORY INSTITUTION SUBSIDIARIES.—*  
 14           *Notwithstanding clause (i), the Board may*  
 15           *make examinations of a functionally regu-*  
 16           *lated nondepository institution subsidiary*  
 17           *of a bank holding company only if—*

18           “(I) *the Board has reasonable*  
 19           *cause to believe that such subsidiary is*  
 20           *engaged in activities that pose a mate-*  
 21           *rial risk to an affiliated depository in-*  
 22           *stitution; or*

23           “(II) *based on reports and other*  
 24           *available information, the Board has*  
 25           *reasonable cause to believe that a sub-*

1            *sidiary is not in compliance with this*  
 2            *Act or with provisions relating to*  
 3            *transactions with an affiliated deposi-*  
 4            *tory institution and the Board cannot*  
 5            *make such determination through ex-*  
 6            *amination of the affiliated depository*  
 7            *institution or bank holding company.*

8            “(B) *LIMITATIONS ON EXAMINATION AU-*  
 9            *THORITY FOR BANK HOLDING COMPANIES AND*  
 10           *SUBSIDIARIES.*—Subject to subparagraph (A)(ii),  
 11           *the Board may make examinations under sub-*  
 12           *paragraph (A)(i) of each bank holding company*  
 13           *and each subsidiary of such holding company in*  
 14           *order to—*

15           “(i) *inform the Board of the nature of*  
 16           *the operations and financial condition of*  
 17           *the holding company and such subsidiaries;*

18           “(ii) *inform the Board of—*

19           “(I) *the financial and operational*  
 20           *risks within the holding company sys-*  
 21           *tem that may pose a threat to the safe-*  
 22           *ty and soundness of any subsidiary de-*  
 23           *pository institution of such holding*  
 24           *company; and*

1                   “(II) the systems for monitoring  
2                   and controlling such risks; and

3                   “(iii) monitor compliance with the  
4                   provisions of this Act and those governing  
5                   transactions and relationships between any  
6                   subsidiary depository institution and its af-  
7                   filiates.

8                   “(C) *RESTRICTED FOCUS OF EXAMINA-*  
9                   *TIONS.—The Board shall, to the fullest extent*  
10                  *possible, limit the focus and scope of any exam-*  
11                  *ination of a bank holding company to—*

12                  “(i) the bank holding company; and

13                  “(ii) any subsidiary of the holding  
14                  company that, because of—

15                  “(I) the size, condition, or activi-  
16                  ties of the subsidiary; or

17                  “(II) the nature or size of trans-  
18                  actions between such subsidiary and  
19                  any depository institution which is  
20                  also a subsidiary of such holding com-  
21                  pany,

22                  could have a materially adverse effect on the  
23                  safety and soundness of any depository in-  
24                  stitution affiliate of the holding company.

1           “(D) *DEFERENCE TO BANK EXAMINA-*  
 2           *TIONS.—The Board shall, to the fullest extent*  
 3           *possible, use, for the purposes of this paragraph,*  
 4           *the reports of examinations of depository institu-*  
 5           *tions made by the appropriate Federal and State*  
 6           *depository institution supervisory authority.*

7           “(E) *DEFERENCE TO OTHER EXAMINA-*  
 8           *TIONS.—The Board shall, to the fullest extent*  
 9           *possible, address the circumstances which might*  
 10          *otherwise permit or require an examination by*  
 11          *the Board by forgoing an examination and in-*  
 12          *stead reviewing the reports of examination made*  
 13          *of—*

14               “(i) *any registered broker or dealer by*  
 15               *or on behalf of the Securities and Exchange*  
 16               *Commission;*

17               “(ii) *any investment adviser registered*  
 18               *by or on behalf of either the Securities and*  
 19               *Exchange Commission or any State, which-*  
 20               *ever is required by law;*

21               “(iii) *any licensed insurance company*  
 22               *by or on behalf of any State regulatory au-*  
 23               *thority responsible for the supervision of in-*  
 24               *surance companies; and*



1                   “(iv) any other subsidiary that the  
2                   Board finds to be comprehensively super-  
3                   vised by a Federal or State authority.

4                   “(3) CAPITAL.—

5                   “(A) IN GENERAL.—The Board shall not, by  
6                   regulation, guideline, order or otherwise, pre-  
7                   scribe or impose any capital or capital adequacy  
8                   rules, guidelines, standards, or requirements on  
9                   any subsidiary of a financial holding company  
10                  that is not a depository institution and—

11                  “(i) is in compliance with applicable  
12                  capital requirements of another Federal reg-  
13                  ulatory authority (including the Securities  
14                  and Exchange Commission) or State insur-  
15                  ance authority;

16                  “(ii) is registered as an investment ad-  
17                  viser under the Investment Advisers Act of  
18                  1940, or with any State, whichever is re-  
19                  quired by law; or

20                  “(iii) is licensed as an insurance agent  
21                  with the appropriate State insurance au-  
22                  thority.

23                  “(B) RULE OF CONSTRUCTION.—Subpara-  
24                  graph (A) shall not be construed as preventing  
25                  the Board from imposing capital or capital ade-

quacy rules, guidelines, standards, or requirements with respect to—

“(i) activities of a registered investment adviser other than investment advisory activities or activities incidental to investment advisory activities; or

“(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

“(C) LIMITATIONS ON INDIRECT ACTION.—

*In developing, establishing, or assessing holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board shall not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—*

“(i) a bank holding company; or

“(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the

1           *shares owned by the bank holding company*  
2           *have a market value equal to more than*  
3           *\$1,000,000.*

4           “(4) *TRANSFER OF BOARD AUTHORITY TO AP-*  
5           *PROPRIATE FEDERAL BANKING AGENCY.—*

6           “(A) *IN GENERAL.—In the case of any bank*  
7           *holding company which is not significantly en-*  
8           *gaged in nonbanking activities, the Board, in*  
9           *consultation with the appropriate Federal bank-*  
10          *ing agency, may designate the appropriate Fed-*  
11          *eral banking agency of the lead insured deposi-*  
12          *tory institution subsidiary of such holding com-*  
13          *pany as the appropriate Federal banking agency*  
14          *for the bank holding company.*

15          “(B) *AUTHORITY TRANSFERRED.—An agen-*  
16          *cy designated by the Board under subparagraph*  
17          *(A) shall have the same authority as the Board*  
18          *under this Act to—*

19               “(i) *examine and require reports from*  
20               *the bank holding company and any affiliate*  
21               *of such company (other than a depository*  
22               *institution) under section 5;*

23               “(ii) *approve or disapprove applica-*  
24               *tions or transactions under section 3;*

1           “(iii) take actions and impose pen-  
 2           alties under subsections (e) and (f) of sec-  
 3           tion 5 and section 8; and

4           “(iv) take actions regarding the hold-  
 5           ing company, any affiliate of the holding  
 6           company (other than a depository institu-  
 7           tion), or any institution-affiliated party of  
 8           such company or affiliate under the Federal  
 9           Deposit Insurance Act and any other stat-  
 10          ute which the Board may designate.

11          “(C) AGENCY ORDERS.—Section 9 of this  
 12          Act and section 105 of the Bank Holding Com-  
 13          pany Act Amendments of 1970 shall apply to or-  
 14          ders issued by an agency designated under sub-  
 15          paragraph (A) in the same manner such sections  
 16          apply to orders issued by the Board.

17          “(5) FUNCTIONAL REGULATION OF SECURITIES  
 18          AND INSURANCE ACTIVITIES.—The Board shall defer  
 19          to—

20               “(A) the Securities and Exchange Commis-  
 21               sion with regard to all interpretations of, and  
 22               the enforcement of, applicable Federal securities  
 23               laws (and rules, regulations, orders, and other  
 24               directives issued thereunder) relating to the ac-  
 25               tivities, conduct, and operations of registered

1        *brokers, dealers, investment advisers, and invest-*  
 2        *ment companies;*

3                *“(B) the relevant State securities authorities*  
 4        *with regard to all interpretations of, and the en-*  
 5        *forcement of, applicable State securities laws*  
 6        *(and rules, regulations, orders, and other direc-*  
 7        *tives issued thereunder) relating to the activities,*  
 8        *conduct, and operations of brokers, dealers, and*  
 9        *investment advisers required to be registered*  
 10        *under State law; and*

11                *“(C) the relevant State insurance authori-*  
 12        *ties with regard to all interpretations of, and the*  
 13        *enforcement of, applicable State insurance laws*  
 14        *(and rules, regulations, orders, and other direc-*  
 15        *tives issued thereunder) relating to the activities,*  
 16        *conduct, and operations of insurance companies*  
 17        *and insurance agents.”.*

18    **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**  
 19        **FOR FINANCIAL HOLDING COMPANIES.**

20        *(a) PREVENTION OF DUPLICATIVE FILINGS.—Section*  
 21        *5(a) of the Bank Holding Company Act of 1956 (12 U.S.C.*  
 22        *1844(a)) is amended by adding the following new sentence*  
 23        *at the end: “A declaration filed in accordance with section*  
 24        *6(b)(1)(D) shall satisfy the requirements of this subsection*  
 25        *with regard to the registration of a bank holding company*

1 *but not any requirement to file an application to acquire*  
 2 *a bank pursuant to section 3.”.*

3 *(b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of*  
 4 *the Bank Holding Company Act of 1956 (12 U.S.C.*  
 5 *1844(e)(1)) is amended—*

6 *(1) by striking “Financial Institutions Super-*  
 7 *visory Act of 1966, order” and inserting “Financial*  
 8 *Institutions Supervisory Act of 1966, at the election*  
 9 *of the bank holding company—*

10 *“(A) order”; and*

11 *(2) by striking “shareholders of the bank holding*  
 12 *company. Such distribution” and inserting “share-*  
 13 *holders of the bank holding company; or*

14 *“(B) order the bank holding company, after due*  
 15 *notice and opportunity for hearing, and after con-*  
 16 *sultation with the primary supervisor for the bank,*  
 17 *which shall be the Comptroller of the Currency in the*  
 18 *case of a national bank, and the Federal Deposit In-*  
 19 *surance Corporation and the appropriate State super-*  
 20 *visor in the case of an insured nonmember bank, to*  
 21 *terminate (within 120 days or such longer period as*  
 22 *the Board may direct) the ownership or control of*  
 23 *any such bank by such company.*

24 *The distribution referred to in subparagraph (A)”.*

1 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**  
 2 **AND SECURITIES AND EXCHANGE COMMIS-**  
 3 **SION.**

4 (a) *BANK HOLDING COMPANIES.*—Section 5 of the  
 5 *Bank Holding Company Act of 1956 (12 U.S.C. 1844)* is  
 6 amended by adding at the end the following new subsection:

7 “(g) *AUTHORITY OF STATE INSURANCE REGULATOR*  
 8 *AND THE SECURITIES AND EXCHANGE COMMISSION.*—

9 “(1) *IN GENERAL.*—Notwithstanding any other  
 10 provision of law, any regulation, order, or other ac-  
 11 tion of the Board which requires a bank holding com-  
 12 pany to provide funds or other assets to a subsidiary  
 13 insured depository institution shall not be effective  
 14 nor enforceable with respect to an entity described in  
 15 subparagraph (A) if—

16 “(A) such funds or assets are to be provided  
 17 by—

18 “(i) a bank holding company that is  
 19 an insurance company, a broker or dealer  
 20 registered under the Securities Exchange  
 21 Act of 1934, an investment company reg-  
 22 istered under the Investment Company Act  
 23 of 1940, or an investment adviser registered  
 24 by or on behalf of either the Securities and  
 25 Exchange Commission or any State; or

1           “(ii) an affiliate of the depository in-  
 2           stitution which is an insurance company or  
 3           a broker or dealer registered under the Secu-  
 4           rities Exchange Act of 1934, an investment  
 5           company registered under the Investment  
 6           Company Act of 1940, or an investment ad-  
 7           viser registered by or on behalf of either the  
 8           Securities and Exchange Commission or  
 9           any State; and

10          “(B) the State insurance authority for the  
 11          insurance company or the Securities and Ex-  
 12          change Commission for the registered broker,  
 13          dealer, investment adviser (solely with respect to  
 14          investment advisory activities or activities inci-  
 15          dental thereto), or investment company, as the  
 16          case may be, determines in writing sent to the  
 17          holding company and the Board that the holding  
 18          company shall not provide such funds or assets  
 19          because such action would have a material ad-  
 20          verse effect on the financial condition of the in-  
 21          surance company or the broker, dealer, invest-  
 22          ment company, or investment adviser, as the  
 23          case may be.

24          “(2) NOTICE TO STATE INSURANCE AUTHORITY  
 25          OR SEC REQUIRED.—If the Board requires a bank



1     *holding company, or an affiliate of a bank holding*  
 2     *company, which is an insurance company or a*  
 3     *broker, dealer, investment company, or investment ad-*  
 4     *viser described in paragraph (1)(A) to provide funds*  
 5     *or assets to an insured depository institution sub-*  
 6     *sidary of the holding company pursuant to any regu-*  
 7     *lation, order, or other action of the Board referred to*  
 8     *in paragraph (1), the Board shall promptly notify the*  
 9     *State insurance authority for the insurance company,*  
 10    *the Securities and Exchange Commission, or State se-*  
 11    *curities regulator, as the case may be, of such require-*  
 12    *ment.*

13           “(3) *DIVESTITURE IN LIEU OF OTHER ACTION.—*  
 14    *If the Board receives a notice described in paragraph*  
 15    *(1)(B) from a State insurance authority or the Secu-*  
 16    *rities and Exchange Commission with regard to a*  
 17    *bank holding company or affiliate referred to in that*  
 18    *paragraph, the Board may order the bank holding*  
 19    *company to divest the insured depository institution*  
 20    *not later than 180 days after receiving the notice, or*  
 21    *such longer period as the Board determines consistent*  
 22    *with the safe and sound operation of the insured de-*  
 23    *pository institution.*

24           “(4) *CONDITIONS BEFORE DIVESTITURE.—Dur-*  
 25    *ing the period beginning on the date an order to di-*

1        *vest is issued by the Board under paragraph (3) to*  
 2        *a bank holding company and ending on the date the*  
 3        *divestiture is completed, the Board may impose any*  
 4        *conditions or restrictions on the holding company's*  
 5        *ownership or operation of the insured depository in-*  
 6        *stitution, including restricting or prohibiting trans-*  
 7        *actions between the insured depository institution and*  
 8        *any affiliate of the institution, as are appropriate*  
 9        *under the circumstances.”.*

10        *(b) SUBSIDIARIES OF DEPOSITORY INSTITUTIONS.—*  
 11        *The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.)*  
 12        *is amended by adding at the end the following new section:*  
 13        **“SEC. 45. AUTHORITY OF STATE INSURANCE REGULATOR**  
 14                                **AND SECURITIES AND EXCHANGE COMMIS-**  
 15                                **SION.**

16        *“(a) IN GENERAL.—Notwithstanding any other provi-*  
 17        *sion of law, any regulation, order, or other action of the*  
 18        *appropriate Federal banking agency which requires a sub-*  
 19        *sidiary to provide funds or other assets to an insured depos-*  
 20        *itory institution shall not be effective nor enforceable with*  
 21        *respect to an entity described in paragraph (1) if—*

22                *“(1) such funds or assets are to be provided by*  
 23        *a subsidiary which is an insurance company, a*  
 24        *broker or dealer registered under the Securities Ex-*  
 25        *change Act of 1934, an investment company reg-*

1        *istered under the Investment Company Act of 1940,*  
 2        *or an investment adviser registered by or on behalf of*  
 3        *either the Securities and Exchange Commission or*  
 4        *any State; and*

5                *“(2) the State insurance authority for the insur-*  
 6        *ance company or the Securities and Exchange Com-*  
 7        *mission for the registered broker or dealer, the invest-*  
 8        *ment company, or the investment adviser, as the case*  
 9        *may be, determines in writing sent to the insured de-*  
 10       *pository institution and the appropriate Federal*  
 11       *banking agency that the subsidiary shall not provide*  
 12       *such funds or assets because such action would have*  
 13       *a material adverse effect on the financial condition of*  
 14       *the insurance company or the broker, dealer, invest-*  
 15       *ment company, or investment adviser, as the case*  
 16       *may be.*

17        *“(b) NOTICE TO STATE INSURANCE AUTHORITY OR*  
 18       *SEC REQUIRED.—If the appropriate Federal banking*  
 19       *agency requires a subsidiary, which is an insurance com-*  
 20       *pany, a broker or dealer, an investment company, or an*  
 21       *investment adviser (solely with respect to investment advi-*  
 22       *sory activities or activities incidental thereto) described in*  
 23       *subsection (a)(1) to provide funds or assets to an insured*  
 24       *depository institution pursuant to any regulation, order,*  
 25       *or other action of the appropriate Federal banking agency*

1 referred to in subsection (a), the appropriate Federal bank-  
 2 ing agency shall promptly notify the State insurance au-  
 3 thority for the insurance company, the Securities and Ex-  
 4 change Commission, or State securities regulator, as the  
 5 case may be, of such requirement.

6 “(c) *DIVESTITURE IN LIEU OF OTHER ACTION.*—If the  
 7 appropriate Federal banking agency receives a notice de-  
 8 scribed in subsection (a)(2) from a State insurance author-  
 9 ity or the Securities and Exchange Commission with regard  
 10 to a subsidiary referred to in that subsection, the appro-  
 11 priate Federal banking agency may order the insured de-  
 12 pository institution to divest the subsidiary not later than  
 13 180 days after receiving the notice, or such longer period  
 14 as the appropriate Federal banking agency determines con-  
 15 sistent with the safe and sound operation of the insured de-  
 16 pository institution.

17 “(d) *CONDITIONS BEFORE DIVESTITURE.*—During the  
 18 period beginning on the date an order to divest is issued  
 19 by the appropriate Federal banking agency under sub-  
 20 section (c) to an insured depository institution and ending  
 21 on the date the divestiture is complete, the appropriate Fed-  
 22 eral banking agency may impose any conditions or restric-  
 23 tions on the insured depository institution’s ownership of  
 24 the subsidiary including restricting or prohibiting trans-

1 *actions between the insured depository institution and the*  
 2 *subsidiary, as are appropriate under the circumstances.”.*

3 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

4 *(a) COMPTROLLER OF THE CURRENCY.—*

5 *(1) IN GENERAL.—The Comptroller of the Cur-*  
 6 *rency may, by regulation or order, impose restrictions*  
 7 *or requirements on relationships or transactions be-*  
 8 *tween a national bank and a subsidiary of the na-*  
 9 *tional bank which the Comptroller finds are con-*  
 10 *sistent with the public interest, the purposes of this*  
 11 *Act, title LXII of the Revised Statutes of the United*  
 12 *States, and other Federal law applicable to national*  
 13 *banks, and the standards in paragraph (2).*

14 *(2) STANDARDS.—The Comptroller of the Cur-*  
 15 *rency may exercise authority under paragraph (1) if*  
 16 *the Comptroller finds that such action will have any*  
 17 *of the following effects:*

18 *(A) Avoid any significant risk to the safety*  
 19 *and soundness of depository institutions or any*  
 20 *Federal deposit insurance fund.*

21 *(B) Enhance the financial stability of*  
 22 *banks.*

23 *(C) Avoid conflicts of interest or other*  
 24 *abuses.*

1                   (D) *Enhance the privacy of customers of the*  
 2                   *national bank or any subsidiary of the bank.*

3                   (E) *Promote the application of national*  
 4                   *treatment and equality of competitive oppor-*  
 5                   *tunity between subsidiaries owned or controlled*  
 6                   *by domestic banks and subsidiaries owned or*  
 7                   *controlled by foreign banks operating in the*  
 8                   *United States.*

9                   (3) *REVIEW.—The Comptroller of the Currency*  
 10                  *shall regularly—*

11                   (A) *review all restrictions or requirements*  
 12                   *established pursuant to paragraph (1) to deter-*  
 13                   *mine whether there is a continuing need for any*  
 14                   *such restriction or requirement to carry out the*  
 15                   *purposes of the Act, including any purpose de-*  
 16                   *scribed in paragraph (2); and*

17                   (B) *modify or eliminate any restriction or*  
 18                   *requirement the Comptroller finds is no longer*  
 19                   *required for such purposes.*

20                  (b) *BOARD OF GOVERNORS OF THE FEDERAL RE-*  
 21                  *SERVE SYSTEM.—*

22                   (1) *IN GENERAL.—The Board of Governors of the*  
 23                   *Federal Reserve System may, by regulation or order,*  
 24                   *impose restrictions or requirements on relationships*  
 25                   *or transactions—*

1           (A) *between a depository institution sub-*  
 2           *subsidiary of a bank holding company and any af-*  
 3           *filiate of such depository institution (other than*  
 4           *a subsidiary of such institution); or*

5           (B) *between a State member bank and a*  
 6           *subsidiary of such bank,*

7           *which the Board finds are consistent with the public*  
 8           *interest, the purposes of this Act, the Bank Holding*  
 9           *Company Act of 1956, the Federal Reserve Act, and*  
 10          *other Federal law applicable to depository institution*  
 11          *subsidiaries of bank holding companies or State banks*  
 12          *(as the case may be), and the standards in paragraph*  
 13          *(2).*

14          (2) *STANDARDS.—The Board of Governors of the*  
 15          *Federal Reserve System may exercise authority under*  
 16          *paragraph (1) if the Board finds that such action will*  
 17          *have any of the following effects:*

18               (A) *Avoid any significant risk to the safety*  
 19               *and soundness of depository institutions or any*  
 20               *Federal deposit insurance fund.*

21               (B) *Enhance the financial stability of bank*  
 22               *holding companies.*

23               (C) *Avoid conflicts of interest or other*  
 24               *abuses.*

1           (D) *Enhance the privacy of customers of the*  
 2           *State member bank or any subsidiary of the*  
 3           *bank.*

4           (E) *Promote the application of national*  
 5           *treatment and equality of competitive oppor-*  
 6           *tunity between nonbank affiliates owned or con-*  
 7           *trolled by domestic bank holding companies and*  
 8           *nonbank affiliates owned or controlled by foreign*  
 9           *banks operating in the United States.*

10          (3) *REVIEW.—The Board of Governors of the*  
 11          *Federal Reserve System shall regularly—*

12               (A) *review all restrictions or requirements*  
 13               *established pursuant to paragraph (1) to deter-*  
 14               *mine whether there is a continuing need for any*  
 15               *such restriction or requirement to carry out the*  
 16               *purposes of the Act, including any purpose de-*  
 17               *scribed in paragraph (2); and*

18               (B) *modify or eliminate any restriction or*  
 19               *requirement the Board finds is no longer re-*  
 20               *quired for such purposes.*

21          (4) *FOREIGN BANKS.—*

22               (A) *IN GENERAL.—The Board may, by reg-*  
 23               *ulation or order, impose restrictions or require-*  
 24               *ments on relationships or transactions between a*  
 25               *branch, agency, or commercial lending company*



1        *of a foreign bank in the United States and any*  
 2        *affiliate in the United States of such foreign*  
 3        *bank that the Board finds are consistent with the*  
 4        *public interest, the purposes of this Act, the*  
 5        *Bank Holding Company Act of 1956, the Federal*  
 6        *Reserve Act, and other Federal law applicable to*  
 7        *foreign banks and their affiliates in the United*  
 8        *States, and the standards in paragraphs (2) and*  
 9        *(3).*

10        *(B) EVASION.—In the event that the Board*  
 11        *determines that there may be circumstances that*  
 12        *would result in an evasion of this paragraph, the*  
 13        *Board may also impose restrictions or require-*  
 14        *ments on relationships or transactions between a*  
 15        *foreign bank outside the United States and any*  
 16        *affiliate in the United States of such foreign*  
 17        *bank that are consistent with national treatment*  
 18        *and equality of competitive opportunity.*

19        *(c) FEDERAL DEPOSIT INSURANCE CORPORATION.—*

20        *(1) IN GENERAL.—The Federal Deposit Insur-*  
 21        *ance Corporation may, by regulation or order, impose*  
 22        *restrictions or requirements on relationships or trans-*  
 23        *actions between a State nonmember bank (as defined*  
 24        *in section 3 of the Federal Deposit Insurance Act)*  
 25        *and a subsidiary of the State nonmember bank which*

1        *the Corporation finds are consistent with the public*  
2        *interest, the purposes of this Act, the Federal Deposit*  
3        *Insurance Act, or other Federal law applicable to*  
4        *State nonmember banks and the standards in para-*  
5        *graph (2).*

6                (2) *STANDARDS.—The Federal Deposit Insurance*  
7        *Corporation may exercise authority under paragraph*  
8        *(1) if the Corporation finds that such action will have*  
9        *any of the following effects:*

10                (A) *Avoid any significant risk to the safety*  
11                *and soundness of depository institutions or any*  
12                *Federal deposit insurance fund.*

13                (B) *Enhance the financial stability of*  
14                *banks.*

15                (C) *Avoid conflicts of interest or other*  
16                *abuses.*

17                (D) *Enhance the privacy of customers of the*  
18                *State nonmember bank or any subsidiary of the*  
19                *bank.*

20                (E) *Promote the application of national*  
21                *treatment and equality of competitive oppor-*  
22                *tunity between subsidiaries owned or controlled*  
23                *by domestic banks and subsidiaries owned or*  
24                *controlled by foreign banks operating in the*  
25                *United States.*

1           (3) *REVIEW.*—*The Federal Deposit Insurance*  
 2     *Corporation shall regularly—*

3                 (A) *review all restrictions or requirements*  
 4                 *established pursuant to paragraph (1) to deter-*  
 5                 *mine whether there is a continuing need for any*  
 6                 *such restriction or requirement to carry out the*  
 7                 *purposes of the Act, including any purpose de-*  
 8                 *scribed in paragraph (2); and*

9                 (B) *modify or eliminate any restriction or*  
 10                 *requirement the Corporation finds is no longer*  
 11                 *required for such purposes.*

12     **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

13           (a) *EXCLUSIVE COMMISSION AUTHORITY.*—

14                 (1) *IN GENERAL.*—*Except as provided in para-*  
 15                 *graph (3), the Commission shall be the sole Federal*  
 16                 *agency with authority to inspect and examine any*  
 17                 *registered investment company that is not a bank*  
 18                 *holding company or a savings and loan holding com-*  
 19                 *pany.*

20                 (2) *PROHIBITION ON BANKING AGENCIES.*—*Ex-*  
 21                 *cept as provided in paragraph (3), a Federal banking*  
 22                 *agency may not inspect or examine any registered in-*  
 23                 *vestment company that is not a bank holding com-*  
 24                 *pany or a savings and loan holding company.*

1           (3) *CERTAIN EXAMINATIONS AUTHORIZED.*—

2           *Nothing in this subsection prevents the Federal De-*  
 3           *posit Insurance Corporation, if the Corporation finds*  
 4           *it necessary to determine the condition of an insured*  
 5           *depository institution for insurance purposes, from*  
 6           *examining an affiliate of any insured depository in-*  
 7           *stitution, pursuant to its authority under section*  
 8           *10(b)(4) of the Federal Deposit Insurance Act, as may*  
 9           *be necessary to disclose fully the relationship between*  
 10          *the depository institution and the affiliate, and the ef-*  
 11          *fect of such relationship on the depository institution.*

12          (b) *EXAMINATION RESULTS AND OTHER INFORMA-*  
 13          *TION.*—*The Commission shall provide to any Federal bank-*  
 14          *ing agency, upon request, the results of any examination,*  
 15          *reports, records, or other information with respect to any*  
 16          *registered investment company to the extent necessary for*  
 17          *the agency to carry out its statutory responsibilities.*

18          (c) *DEFINITIONS.*—*For purposes of this section, the fol-*  
 19          *lowing definitions shall apply:*

20               (1) *BANK HOLDING COMPANY.*—*The term “bank*  
 21               *holding company” has the same meaning as in sec-*  
 22               *tion 2 of the Bank Holding Company Act of 1956.*

23               (2) *COMMISSION.*—*The term “Commission”*  
 24               *means the Securities and Exchange Commission.*

1           (3) *FEDERAL BANKING AGENCY.*—*The term*  
 2           *“Federal banking agency” has the same meaning as*  
 3           *in section 3(z) of the Federal Deposit Insurance Act.*

4           (4) *REGISTERED INVESTMENT COMPANY.*—*The*  
 5           *term “registered investment company” means an in-*  
 6           *vestment company which is registered with the Com-*  
 7           *mission under the Investment Company Act of 1940.*

8           (5) *SAVINGS AND LOAN HOLDING COMPANY.*—*The*  
 9           *term “savings and loan holding company” has the*  
 10          *same meaning as in section 10(a)(1)(D) of the Home*  
 11          *Owners’ Loan Act.*

12 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
 13                   **PERVISORY, AND ENFORCEMENT AUTHORITY**  
 14                   **OF THE BOARD.**

15          *The Bank Holding Company Act of 1956 (12 U.S.C.*  
 16          *1841 et seq.) is amended by inserting after section 10 the*  
 17          *following new section:*

18 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**  
 19                   **PERVISORY, AND ENFORCEMENT AUTHORITY**  
 20                   **OF THE BOARD.**

21          **“(a) LIMITATION ON DIRECT ACTION.—**

22               **“(1) IN GENERAL.—***The Board may not pre-*  
 23               *scribe regulations, issue or seek entry of orders, im-*  
 24               *pose restraints, restrictions, guidelines, requirements,*  
 25               *safeguards, or standards, or otherwise take any action*

1        *under or pursuant to any provision of this Act or sec-*  
 2        *tion 8 of the Federal Deposit Insurance Act against*  
 3        *or with respect to a regulated subsidiary of a bank*  
 4        *holding company unless the action is necessary to*  
 5        *prevent or redress an unsafe or unsound practice or*  
 6        *breach of fiduciary duty by such subsidiary that poses*  
 7        *a material risk to—*

8                *“(A) the financial safety, soundness, or sta-*  
 9                *bility of an affiliated depository institution; or*

10               *“(B) the domestic or international payment*  
 11               *system.*

12               *“(2) CRITERIA FOR BOARD ACTION.—The Board*  
 13        *shall not take action otherwise permitted under para-*  
 14        *graph (1) unless the Board finds that it is not reason-*  
 15        *ably possible to effectively protect against the material*  
 16        *risk at issue through action directed at or against the*  
 17        *affiliated depository institution or against depository*  
 18        *institutions generally.*

19               *“(b) LIMITATION ON INDIRECT ACTION.—The Board*  
 20        *may not prescribe regulations, issue or seek entry of orders,*  
 21        *impose restraints, restrictions, guidelines, requirements,*  
 22        *safeguards, or standards, or otherwise take any action*  
 23        *under or pursuant to any provision of this Act or section*  
 24        *8 of the Federal Deposit Insurance Act against or with re-*  
 25        *spect to a financial holding company or a wholesale finan-*

1 cial holding company where the purpose or effect of doing  
 2 so would be to take action indirectly against or with respect  
 3 to a regulated subsidiary that may not be taken directly  
 4 against or with respect to such subsidiary in accordance  
 5 with subsection (a).

6 “(c) *ACTIONS SPECIFICALLY AUTHORIZED.*—Notwith-  
 7 standing subsection (a), the Board may take action under  
 8 this Act or section 8 of the Federal Deposit Insurance Act  
 9 to enforce compliance by a regulated subsidiary with Fed-  
 10 eral law that the Board has specific jurisdiction to enforce  
 11 against such subsidiary.

12 “(d) *REGULATED SUBSIDIARY DEFINED.*—For pur-  
 13 poses of this section, the term ‘regulated subsidiary’ means  
 14 any company that is not a bank holding company and is—

15 “(1) a broker or dealer registered under the Secu-  
 16 rities Exchange Act of 1934;

17 “(2) an investment adviser registered by or on  
 18 behalf of either the Securities and Exchange Commis-  
 19 sion or any State, whichever is required by law, with  
 20 respect to the investment advisory activities of such  
 21 investment adviser and activities incidental to such  
 22 investment advisory activities;

23 “(3) an investment company registered under the  
 24 Investment Company Act of 1940;

1           “(4) an insurance company or an insurance  
 2           agency, with respect to the insurance activities and  
 3           activities incidental to such insurance activities, sub-  
 4           ject to supervision by a State insurance commission,  
 5           agency, or similar authority; or

6           “(5) an entity subject to regulation by the Com-  
 7           modity Futures Trading Commission, with respect to  
 8           the commodities activities of such entity and activi-  
 9           ties incidental to such commodities activities.”.

10 **SEC. 117. EQUIVALENT REGULATION AND SUPERVISION.**

11           (a) *IN GENERAL.*—Notwithstanding any other provi-  
 12           sion of law, the provisions of—

13           (1) section 5(c) of the Bank Holding Company  
 14           Act of 1956 (as amended by this Act) that limit the  
 15           authority of the Board of Governors of the Federal  
 16           Reserve System to require reports from, to make ex-  
 17           aminations of, or to impose capital requirements on  
 18           bank holding companies and their nonbank subsidi-  
 19           aries or that require deference to other regulators; and

20           (2) section 10A of the Bank Holding Company  
 21           Act of 1956 (as added by this Act) that limit what-  
 22           ever authority the Board might otherwise have to take  
 23           direct or indirect action with respect to bank holding  
 24           companies and their nonbank subsidiaries,



1 *shall also limit whatever authority that a Federal banking*  
 2 *agency (as defined in section 3(z) of the Federal Deposit*  
 3 *Insurance Act) might otherwise have under any statute to*  
 4 *require reports, make examinations, impose capital require-*  
 5 *ments or take any other direct or indirect action with re-*  
 6 *spect to bank holding companies and their nonbank subsidi-*  
 7 *aries (including nonbank subsidiaries of depository institu-*  
 8 *tions), subject to the same standards and requirements as*  
 9 *are applicable to the Board under such provisions.*

10 *(b) CERTAIN EXAMINATIONS AUTHORIZED.—No provi-*  
 11 *sion of this section shall be construed as preventing the Fed-*  
 12 *eral Deposit Insurance Corporation, if the Corporation*  
 13 *finds it necessary to determine the condition of an insured*  
 14 *depository institution for insurance purposes, from exam-*  
 15 *ining an affiliate of any insured depository institution,*  
 16 *pursuant to its authority under section 10(b)(4) of the Fed-*  
 17 *eral Deposit Insurance Act, as may be necessary to disclose*  
 18 *fully the relationship between the depository institution and*  
 19 *the affiliate, and the effect of such relationship on the depos-*  
 20 *itory institution.*

21 **SEC. 118. PROHIBITION ON FDIC ASSISTANCE TO AFFILI-**  
 22 **ATES AND SUBSIDIARIES.**

23 *Section 11(a)(4)(B) of the Federal Deposit Insurance*  
 24 *Act (12 U.S.C. 1821(a)(4)(B)) is amended by striking “to*  
 25 *benefit any shareholder of” and inserting “to benefit any*

1 *shareholder, affiliate (other than an insured depository in-*  
 2 *stitution that receives assistance in accordance with the*  
 3 *provisions of this Act), or subsidiary of’.*

4 **SEC. 119. REPEAL OF SAVINGS BANK PROVISIONS IN THE**  
 5 **BANK HOLDING COMPANY ACT OF 1956.**

6 *Section 3(f) of the Bank Holding Company Act of 1956*  
 7 *(12 U.S.C. 1842(f)) is amended to read as follows:*

8 *“(f) [Repealed].”.*

9 **SEC. 120. TECHNICAL AMENDMENT.**

10 *Section 2(o)(1)(A) of the Bank Holding Company Act*  
 11 *of 1956 (12 U.S.C. 1841(o)(1)(A)) is amended by striking*  
 12 *“section 38(b)” and inserting “section 38”.*

13 ***Subtitle C—Subsidiaries of***  
 14 ***National Banks***

15 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**  
 16 **NATIONAL BANKS.**

17 *(a) FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.—*  
 18 *Chapter 1 of title LXII of the Revised Statutes of United*  
 19 *States (12 U.S.C. 21 et seq.) is amended—*

20 *(1) by redesignating section 5136A as section*  
 21 *5136C; and*

22 *(2) by inserting after section 5136 (12 U.S.C.*  
 23 *24) the following new section:*

1 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

2       “(a) *SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED*  
3 *TO ENGAGE IN FINANCIAL ACTIVITIES.*—

4               “(1) *EXCLUSIVE AUTHORITY.*—No provision of  
5 *section 5136 or any other provision of this title LXII*  
6 *of the Revised Statutes of the United States shall be*  
7 *construed as authorizing a subsidiary of a national*  
8 *bank to engage in, or own any share of or any other*  
9 *interest in any company engaged in, any activity*  
10 *that—*

11               “(A) *is not permissible for a national bank*  
12 *to engage in directly; or*

13               “(B) *is conducted under terms or conditions*  
14 *other than those that would govern the conduct*  
15 *of such activity by a national bank,*  
16 *unless a national bank is specifically authorized by*  
17 *the express terms of a Federal statute and not by im-*  
18 *plication or interpretation to acquire shares of or an*  
19 *interest in, or to control, such subsidiary, such as by*  
20 *paragraph (2) of this subsection and section 25A of*  
21 *the Federal Reserve Act.*

22               “(2) *SPECIFIC AUTHORIZATION TO CONDUCT AC-*  
23 *TIVITIES WHICH ARE FINANCIAL IN NATURE.*—Subject  
24 *to paragraphs (3) and (4), a national bank may con-*  
25 *trol a financial subsidiary, or hold an interest in a*

1     *financial subsidiary, that is controlled by insured de-*  
 2     *pository institutions or subsidiaries thereof.*

3             “(3) *ELIGIBILITY REQUIREMENTS.*—*A national*  
 4     *bank may control or hold an interest in a company*  
 5     *pursuant to paragraph (2) only if—*

6             “(A) *the national bank and all depository*  
 7     *institution affiliates of the national bank are*  
 8     *well capitalized;*

9             “(B) *the national bank and all depository*  
 10    *institution affiliates of the national bank are*  
 11    *well managed;*

12            “(C) *the national bank and all depository*  
 13    *institution affiliates of such national bank have*  
 14    *achieved a rating of ‘satisfactory record of meet-*  
 15    *ing community credit needs’, or better, at the*  
 16    *most recent examination of each such bank or in-*  
 17    *stitution; and*

18            “(D) *the bank has received the approval of*  
 19    *the Comptroller of the Currency.*

20            “(4) *ACTIVITY LIMITATIONS.*—*In addition to any*  
 21    *other limitation imposed on the activity of subsidi-*  
 22    *aries of national banks, a subsidiary of a national*  
 23    *bank may not, pursuant to paragraph (2)—*

24            “(A) *engage as principal in insuring, guar-*  
 25    *anteeing, or indemnifying against loss, harm,*

1        *damage, illness, disability, or death (other than*  
 2        *in connection with credit-related insurance) or*  
 3        *in providing or issuing annuities;*

4                *“(B) engage in real estate investment or de-*  
 5        *velopment activities; or*

6                *“(C) engage in any activity permissible for*  
 7        *a financial holding company under paragraph*  
 8        *(3)(I) of section 6(c) of the Bank Holding Com-*  
 9        *pany Act of 1956 (relating to insurance com-*  
 10       *pany investments).*

11                *“(5) SIZE FACTOR WITH REGARD TO FREE-*  
 12       *STANDING NATIONAL BANKS.—Notwithstanding para-*  
 13       *graph (2), a national bank which has total assets of*  
 14       *\$10,000,000,000 or more may not control a sub-*  
 15       *sidary engaged in financial activities pursuant to*  
 16       *such paragraph unless such national bank is a sub-*  
 17       *sidary of a bank holding company.*

18                *“(6) LIMITED EXCLUSIONS FROM COMMUNITY*  
 19       *NEEDS REQUIREMENTS FOR NEWLY AFFILIATED DE-*  
 20       *POSITORY INSTITUTIONS.—Any depository institution*  
 21       *which becomes an affiliate of a national bank during*  
 22       *the 12-month period preceding the date of an ap-*  
 23       *proval by the Comptroller of the Currency under*  
 24       *paragraph (3)(D) for such bank, and any depository*  
 25       *institution which becomes an affiliate of the national*

1     *bank after such date, may be excluded for purposes of*  
 2     *paragraph (3)(C) during the 12-month period begin-*  
 3     *ning on the date of such affiliation if—*

4             *“(A) the national bank or such depository*  
 5             *institution has submitted an affirmative plan to*  
 6             *the appropriate Federal banking agency to take*  
 7             *such action as may be necessary in order for*  
 8             *such institution to achieve a rating of ‘satisfac-*  
 9             *tory record of meeting community credit needs’,*  
 10            *or better, at the next examination of the institu-*  
 11            *tion; and*

12            *“(B) the plan has been accepted by such*  
 13            *agency.*

14            *“(7) DEFINITIONS.—For purposes of this section,*  
 15     *the following definitions shall apply:*

16            *“(A) COMPANY; CONTROL; AFFILIATE; SUB-*  
 17            *SIDIARY.—The terms ‘company’, ‘control’, ‘affil-*  
 18            *iate’, and ‘subsidiary’ have the same meanings*  
 19            *as in section 2 of the Bank Holding Company*  
 20            *Act of 1956.*

21            *“(B) FINANCIAL SUBSIDIARY.—The term ‘fi-*  
 22            *nancial subsidiary’ means a company which is*  
 23            *a subsidiary of an insured bank and is engaged*  
 24            *in financial activities that have been determined*  
 25            *to be financial in nature or incidental to such fi-*

1        *nancial activities in accordance with subsection*  
 2        *(b) or permitted in accordance with subsection*  
 3        *(b)(4), other than activities that are permissible*  
 4        *for a national bank to engage in directly or that*  
 5        *are authorized under the Bank Service Company*  
 6        *Act, section 25 or 25A of the Federal Reserve*  
 7        *Act, or any other Federal statute (other than this*  
 8        *section) that specifically authorizes the conduct*  
 9        *of such activities by its express terms and not by*  
 10       *implication or interpretation.*

11        “(C) *WELL CAPITALIZED.*—*The term ‘well*  
 12        *capitalized’ has the same meaning as in section*  
 13        *38 of the Federal Deposit Insurance Act and, for*  
 14        *purposes of this section, the Comptroller shall*  
 15        *have exclusive jurisdiction to determine whether*  
 16        *a national bank is well capitalized.*

17        “(D) *WELL MANAGED.*—*The term ‘well*  
 18        *managed’ means—*

19                “(i) *in the case of a depository institu-*  
 20                *tion that has been examined, unless other-*  
 21                *wise determined in writing by the appro-*  
 22                *priate Federal banking agency—*

23                        “(I) *the achievement of a com-*  
 24                        *posite rating of 1 or 2 under the Uni-*  
 25                        *form Financial Institutions Rating*

1                    *System (or an equivalent rating under*  
 2                    *an equivalent rating system) in con-*  
 3                    *nection with the most recent examina-*  
 4                    *tion or subsequent review of the deposi-*  
 5                    *tory institution; and*

6                    *“(II) at least a rating of 2 for*  
 7                    *management, if that rating is given; or*

8                    *“(ii) in the case of any depository in-*  
 9                    *stitution that has not been examined, the*  
 10                    *existence and use of managerial resources*  
 11                    *that the appropriate Federal banking agen-*  
 12                    *cy determines are satisfactory.*

13                    *“(E) INCORPORATED DEFINITIONS.—The*  
 14                    *terms ‘appropriate Federal banking agency’ and*  
 15                    *‘depository institution’ have the same meanings*  
 16                    *as in section 3 of the Federal Deposit Insurance*  
 17                    *Act.*

18                    *“(b) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—*

19                    *“(1) FINANCIAL ACTIVITIES.—*

20                    *“(A) IN GENERAL.—For purposes of sub-*  
 21                    *section (a)(7)(B), an activity shall be considered*  
 22                    *to have been determined to be financial in na-*  
 23                    *ture or incidental to such financial activities*  
 24                    *only if—*



1           “(i) *such activity is permitted for a fi-*  
 2           *nancial holding company pursuant to sec-*  
 3           *tion 6(c)(3) of the Bank Holding Company*  
 4           *Act of 1956 (to the extent such activity is*  
 5           *not otherwise prohibited under this section*  
 6           *or any other provision of law for a sub-*  
 7           *sidary of a national bank engaged in ac-*  
 8           *tivities pursuant to subsection (a)(2)); or*

9           “(ii) *the Secretary of the Treasury de-*  
 10          *termines the activity to be financial in na-*  
 11          *ture or incidental to such financial activi-*  
 12          *ties in accordance with subparagraph (B)*  
 13          *or paragraph (3).*

14          “(B) *COORDINATION BETWEEN THE BOARD*  
 15          *AND THE SECRETARY OF THE TREASURY.—*

16          “(i) *PROPOSALS RAISED BEFORE THE*  
 17          *SECRETARY OF THE TREASURY.—*

18          “(I) *CONSULTATION.—The Sec-*  
 19          *retary of the Treasury shall notify the*  
 20          *Board of, and consult with the Board*  
 21          *concerning, any request, proposal, or*  
 22          *application under this subsection, in-*  
 23          *cluding any regulation or order pro-*  
 24          *posed under paragraph (3), for a deter-*  
 25          *mination of whether an activity is fi-*

1            *nancial in nature or incidental to such*  
 2            *a financial activity.*

3            “(II) *BOARD VIEW.*—*The Sec-*  
 4            *retary of the Treasury shall not deter-*  
 5            *mine that any activity is financial in*  
 6            *nature or incidental to a financial ac-*  
 7            *tivity under this subsection if the*  
 8            *Board notifies the Secretary in writ-*  
 9            *ing, not later than 30 days after the*  
 10           *date of receipt of the notice described*  
 11           *in subclause (I) (or such longer period*  
 12           *as the Secretary determines to be ap-*  
 13           *propriate in light of the circumstances)*  
 14           *that the Board believes that the activ-*  
 15           *ity is not financial in nature or inci-*  
 16           *dental to a financial activity.*

17           “(ii) *PROPOSALS RAISED BY THE*  
 18           *BOARD.*—

19           “(I) *BOARD RECOMMENDATION.*—  
 20           *The Board may, at any time, rec-*  
 21           *ommend in writing that the Secretary*  
 22           *of the Treasury find an activity to be*  
 23           *financial in nature or incidental to a*  
 24           *financial activity (other than an activ-*

1 *ity which the Board has sole authority*  
 2 *to regulate under subparagraph (C)).*

3 “(II) *TIME PERIOD FOR SECRE-*  
 4 *TARIAL ACTION.*—Not later than 30  
 5 *days after the date of receipt of a writ-*  
 6 *ten recommendation from the Board*  
 7 *under subclause (I) (or such longer pe-*  
 8 *riod as the Secretary of the Treasury*  
 9 *and the Board determine to be appro-*  
 10 *priate in light of the circumstances),*  
 11 *the Secretary shall determine whether*  
 12 *to initiate a public rulemaking pro-*  
 13 *posing that the subject recommended*  
 14 *activity be found to be financial in na-*  
 15 *ture or incidental to a financial activ-*  
 16 *ity under this subsection, and shall no-*  
 17 *tify the Board in writing of the deter-*  
 18 *mination of the Secretary and, in the*  
 19 *event that the Secretary determines not*  
 20 *to seek public comment on the pro-*  
 21 *posal, the reasons for that determina-*  
 22 *tion.*

23 “(C) *AUTHORITY OVER MERCHANT BANK-*  
 24 *ING.*—The Board shall have sole authority to  
 25 *prescribe regulations and issue interpretations to*

1           *implement this paragraph with respect to activi-*  
2           *ties described in section 6(c)(3)(H) of the Bank*  
3           *Holding Company Act of 1956.*

4           “(2) *FACTORS TO BE CONSIDERED.—In deter-*  
5           *mining whether an activity is financial in nature or*  
6           *incidental to financial activities, the Secretary shall*  
7           *take into account—*

8                     “(A) *the purposes of this Act and the Fi-*  
9                     *ancial Services Act of 1999;*

10                    “(B) *changes or reasonably expected changes*  
11                    *in the marketplace in which banks compete;*

12                    “(C) *changes or reasonably expected changes*  
13                    *in the technology for delivering financial serv-*  
14                    *ices; and*

15                    “(D) *whether such activity is necessary or*  
16                    *appropriate to allow a bank and the subsidiaries*  
17                    *of a bank to—*

18                             “(i) *compete effectively with any com-*  
19                             *pany seeking to provide financial services*  
20                             *in the United States;*

21                             “(ii) *use any available or emerging*  
22                             *technological means, including any applica-*  
23                             *tion necessary to protect the security or effi-*  
24                             *cacy of systems for the transmission of data*

1                   or financial transactions, in providing fi-  
2                   nancial services; and

3                   “(iii) offer customers any available or  
4                   emerging technological means for using fi-  
5                   nancial services.

6                   “(3) *AUTHORIZATION OF NEW FINANCIAL ACTIVI-*  
7                   *TIES.*—The Secretary of the Treasury shall, by regu-  
8                   lation or order and in accordance with paragraph  
9                   (1)(B), define, consistent with the purposes of this  
10                  Act, the following activities as, and the extent to  
11                  which such activities are, financial in nature or inci-  
12                  dental to activities which are financial in nature:

13                  “(A) Lending, exchanging, transferring, in-  
14                  vesting for others, or safeguarding financial as-  
15                  sets other than money or securities.

16                  “(B) Providing any device or other instru-  
17                  mentality for transferring money or other finan-  
18                  cial assets.

19                  “(C) Arranging, effecting, or facilitating fi-  
20                  nancial transactions for the account of third  
21                  parties.

22                  “(4) *DEVELOPING ACTIVITIES.*—Subject to sub-  
23                  section (a)(2), a financial subsidiary of a national  
24                  bank may engage directly or indirectly, or acquire  
25                  shares of any company engaged, in any activity that

1     *the Secretary has not determined to be financial in*  
2     *nature or incidental to financial activities under this*  
3     *subsection if—*

4             *“(A) the subsidiary reasonably concludes*  
5             *that the activity is financial in nature or inci-*  
6             *dental to financial activities;*

7             *“(B) the gross revenues from all activities*  
8             *conducted under this paragraph represent less*  
9             *than 5 percent of the consolidated gross revenues*  
10            *of the national bank;*

11            *“(C) the aggregate total assets of all compa-*  
12            *nies the shares of which are held under this*  
13            *paragraph do not exceed 5 percent of the na-*  
14            *tional bank’s consolidated total assets;*

15            *“(D) the total capital invested in activities*  
16            *conducted under this paragraph represents less*  
17            *than 5 percent of the consolidated total capital*  
18            *of the national bank;*

19            *“(E) neither the Secretary of the Treasury*  
20            *nor the Board has determined that the activity*  
21            *is not financial in nature or incidental to finan-*  
22            *cial activities under this subsection; and*

23            *“(F) the national bank provides written no-*  
24            *tice to the Secretary of the Treasury describing*  
25            *the activity commenced by the subsidiary or con-*

1           *ducted by the company acquired no later than 10*  
 2           *business days after commencing the activity or*  
 3           *consummating the acquisition.*

4           “(c) *PROVISIONS APPLICABLE TO NATIONAL BANKS*  
 5           *THAT FAIL TO MEET REQUIREMENTS.—*

6           “(1) *IN GENERAL.—If a national bank or deposi-*  
 7           *tory institution affiliate is not in compliance with the*  
 8           *requirements of subparagraph (A), (B), or (C) of sub-*  
 9           *section (a)(3), the appropriate Federal banking agen-*  
 10           *cy shall notify the Comptroller of the Currency, who*  
 11           *shall give notice of such finding to the national bank.*

12           “(2) *AGREEMENT TO CORRECT CONDITIONS RE-*  
 13           *QUIRED.—Not later than 45 days after receipt by a*  
 14           *national bank of a notice given under paragraph (1)*  
 15           *(or such additional period as the Comptroller of the*  
 16           *Currency may permit), the national bank and any*  
 17           *relevant affiliated depository institution shall execute*  
 18           *an agreement acceptable to the Comptroller of the*  
 19           *Currency and the other appropriate Federal banking*  
 20           *agencies, if any, to comply with the requirements ap-*  
 21           *plicable under subsection (a)(3).*

22           “(3) *COMPTROLLER OF THE CURRENCY MAY IM-*  
 23           *POSE LIMITATIONS.—Until the conditions described in*  
 24           *a notice to a national bank under paragraph (1) are*  
 25           *corrected—*

1           “(A) the Comptroller of the Currency may  
 2           impose such limitations on the conduct or activi-  
 3           ties of the national bank or any subsidiary of the  
 4           bank as the Comptroller of the Currency deter-  
 5           mines to be appropriate under the circumstances;  
 6           and

7           “(B) the appropriate Federal banking agen-  
 8           cy may impose such limitations on the conduct  
 9           or activities of an affiliated depository institu-  
 10          tion or any subsidiary of the depository institu-  
 11          tion as such agency determines to be appropriate  
 12          under the circumstances.

13          “(4) *FAILURE TO CORRECT*.—If, after receiving a  
 14          notice under paragraph (1), a national bank and  
 15          other affiliated depository institutions do not—

16               “(A) execute and implement an agreement  
 17               in accordance with paragraph (2);

18               “(B) comply with any limitations imposed  
 19               under paragraph (3);

20               “(C) in the case of a notice of failure to  
 21               comply with subsection (a)(3)(A), restore the na-  
 22               tional bank or any depository institution affil-  
 23               iate of the bank to well capitalized status before  
 24               the end of the 180-day period beginning on the  
 25               date such notice is received by the national bank



(or such other period permitted by the Comptroller of the Currency); or

“(D) in the case of a notice of failure to comply with subparagraph (B) or (C) of subsection (a)(3), restore compliance with any such subparagraph on or before the date on which the next examination of the depository institution subsidiary is completed or by the end of such other period as the Comptroller of the Currency determines to be appropriate,

the Comptroller of the Currency may require such national bank, under such terms and conditions as may be imposed by the Comptroller of the Currency and subject to such extension of time as may be granted in the Comptroller of the Currency’s discretion, to divest control of any subsidiary engaged in activities pursuant to subsection (a)(2) or, at the election of the national bank, instead to cease to engage in any activity conducted by a subsidiary of the national bank pursuant to subsection (a)(2).

“(5) CONSULTATION.—In taking any action under this subsection, the Comptroller of the Currency shall consult with all relevant Federal and State regulatory agencies.”.

1       (b) *CLERICAL AMENDMENT.*—*The table of sections for*  
 2 *chapter 1 of title LXII of the Revised Statutes of the United*  
 3 *States is amended—*

4               (1) *by redesignating the item relating to section*  
 5 *5136A as section 5136C; and*

6               (2) *by inserting after the item relating to section*  
 7 *5136 the following new item:*

*“5136A. Subsidiaries of national banks.”.*

8   **SEC. 122. SAFETY AND SOUNDNESS FIREWALLS BETWEEN**  
 9               **BANKS AND THEIR FINANCIAL SUBSIDIARIES.**

10       (a) *PURPOSES.*—*The purposes of this section are—*

11               (1) *to protect the safety and soundness of any in-*  
 12 *sured bank that has a financial subsidiary;*

13               (2) *to apply to any transaction between the bank*  
 14 *and the financial subsidiary (including a loan, exten-*  
 15 *sion of credit, guarantee, or purchase of assets), other*  
 16 *than an equity investment, the same restrictions and*  
 17 *requirements as would apply if the financial sub-*  
 18 *sidary were a subsidiary of a bank holding company*  
 19 *having control of the bank; and*

20               (3) *to apply to any equity investment of the*  
 21 *bank in the financial subsidiary restrictions and re-*  
 22 *quirements equivalent to those that would apply if—*

23                       (A) *the bank paid a dividend in the same*  
 24 *dollar amount to a bank holding company hav-*  
 25 *ing control of the bank; and*

1           *(B) the bank holding company used the pro-*  
 2           *ceeds of the dividend to make an equity invest-*  
 3           *ment in a subsidiary that was engaged in the*  
 4           *same activities as the financial subsidiary of the*  
 5           *bank.*

6           *(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE*  
 7           *TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insur-*  
 8           *ance Act (12 U.S.C. 1811 et seq.) is amended by inserting*  
 9           *after section 45 (as added by section 113(b) of this title)*  
 10          *the following new section:*

11          **“SEC. 46. SAFETY AND SOUNDNESS FIREWALLS APPLICA-**  
 12                                   **BLE TO SUBSIDIARIES OF BANKS.**

13           *“(a) LIMITING THE EQUITY INVESTMENT OF A BANK*  
 14           *IN A SUBSIDIARY.—*

15                   *“(1) CAPITAL DEDUCTION.—In determining*  
 16           *whether an insured bank complies with applicable*  
 17           *regulatory capital standards—*

18                           *“(A) the appropriate Federal banking agen-*  
 19           *cy shall deduct from the assets and tangible eq-*  
 20           *uity of the bank the aggregate amount of the out-*  
 21           *standing equity investments of the bank in fi-*  
 22           *nancial subsidiaries of the bank; and*

23                           *“(B) the assets and liabilities of such finan-*  
 24           *cial subsidiaries shall not be consolidated with*  
 25           *those of the bank.*

1           “(2) *INVESTMENT LIMITATION.*—An insured  
 2       *bank shall not, without the prior approval of the ap-*  
 3       *propriate Federal banking agency, make any equity*  
 4       *investment in a financial subsidiary of the bank if*  
 5       *that investment would, when made, exceed the amount*  
 6       *that the bank could pay as a dividend without ob-*  
 7       *taining prior regulatory approval.*

8           “(3) *TREATMENT OF RETAINED EARNINGS.*—The  
 9       *amount of any net earnings retained by a financial*  
 10      *subsidiary of an insured depository institution shall*  
 11      *be treated as an outstanding equity investment of the*  
 12      *bank in the subsidiary for purposes of paragraph (1).*

13          “(b) *OPERATIONAL AND FINANCIAL SAFEGUARDS FOR*  
 14      *THE BANK.*—An insured bank that has a financial sub-  
 15      *sidary shall maintain procedures for identifying and man-*  
 16      *aging any financial and operational risks posed by the fi-*  
 17      *nancial subsidiary.*

18          “(c) *MAINTENANCE OF SEPARATE CORPORATE IDEN-*  
 19      *TITY AND SEPARATE LEGAL STATUS.*—

20           “(1) *IN GENERAL.*—Each insured bank shall en-  
 21      *sure that the bank maintains and complies with rea-*  
 22      *sonable policies and procedures to preserve the sepa-*  
 23      *rate corporate identity and legal status of the bank*  
 24      *and any financial subsidiary or affiliate of the bank.*

1           “(2) *EXAMINATIONS.*—*The appropriate Federal*  
 2           *banking agency, as part of each examination, shall*  
 3           *review whether an insured bank is observing the sepa-*  
 4           *rate corporate identity and separate legal status of*  
 5           *any subsidiaries and affiliates of the bank.*

6           “(d) *FINANCIAL SUBSIDIARY DEFINED.*—*For purposes*  
 7           *of this section, the term ‘financial subsidiary’ has the mean-*  
 8           *ing given to such term in section 5136A(a)(7)(B) of the Re-*  
 9           *vised Statutes of the United States.*

10          “(e) *REGULATIONS.*—*The appropriate Federal bank-*  
 11          *ing agencies shall jointly prescribe regulations imple-*  
 12          *menting this section.”.*

13          (c) *TRANSACTIONS BETWEEN FINANCIAL SUBSIDI-*  
 14          *ARIES AND OTHER AFFILIATES.*—*Section 23A of the Fed-*  
 15          *eral Reserve Act (12 U.S.C. 371c) is amended—*

16                 (1) *by redesignating subsection (e) as subsection*  
 17                 *(f); and*

18                 (2) *by inserting after subsection (d), the fol-*  
 19                 *lowing new subsection:*

20          “(e) *RULES RELATING TO BANKS WITH FINANCIAL*  
 21          *SUBSIDIARIES.*—

22                 “(1) *FINANCIAL SUBSIDIARY DEFINED.*—*For*  
 23                 *purposes of this section and section 23B, the term ‘fi-*  
 24                 *nancial subsidiary’ means a company which is a sub-*  
 25                 *subsidiary of a bank and is engaged in activities that*

1        *are financial in nature or incidental to such finan-*  
 2        *cial activities pursuant to subsection (a)(2) or (b)(4)*  
 3        *of section 5136A of the Revised Statutes of the United*  
 4        *States.*

5                *“(2) APPLICATION TO TRANSACTIONS BETWEEN A*  
 6        *FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—*  
 7        *For purposes of applying this section and section 23B*  
 8        *to a transaction between a financial subsidiary of a*  
 9        *bank and the bank (or between such financial sub-*  
 10        *sidary and any other subsidiary of the bank which*  
 11        *is not a financial subsidiary) and notwithstanding*  
 12        *subsection (b)(2) and section 23B(d)(1), the financial*  
 13        *subsidiary of the bank—*

14                *“(A) shall be an affiliate of the bank and*  
 15                *any other subsidiary of the bank which is not a*  
 16                *financial subsidiary; and*

17                *“(B) shall not be treated as a subsidiary of*  
 18                *the bank.*

19                *“(3) APPLICATION TO TRANSACTIONS BETWEEN*  
 20        *FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—*

21                *“(A) IN GENERAL.—A transaction between*  
 22                *a financial subsidiary and an affiliate of the fi-*  
 23                *nancial subsidiary shall not be deemed to be a*  
 24                *transaction between a subsidiary of a national*  
 25                *bank and an affiliate of the bank for purposes of*

1        *section 23A or section 23B of the Federal Reserve*  
 2        *Act.*

3                “(B) *CERTAIN AFFILIATES EXCLUDED.*—For  
 4        *purposes of subparagraph (A) and notwith-*  
 5        *standing paragraph (4), the term ‘affiliate’ shall*  
 6        *not include a bank, or a subsidiary of a bank,*  
 7        *which is engaged exclusively in activities permis-*  
 8        *sible for a national bank to engage in directly or*  
 9        *which are authorized by any Federal law other*  
 10       *than section 5136A of the Revised Statutes of the*  
 11       *United States.*

12               “(4) *EQUITY INVESTMENTS EXCLUDED SUBJECT*  
 13       *TO THE APPROVAL OF THE BANKING AGENCY.*—Sub-  
 14       *section (a)(1) shall not apply so as to limit the equity*  
 15       *investment of a bank in a financial subsidiary of*  
 16       *such bank, except that any investment that exceeds the*  
 17       *amount of a dividend that the bank could pay at the*  
 18       *time of the investment without obtaining prior ap-*  
 19       *proval of the appropriate Federal banking agency and*  
 20       *is in excess of the limitation which would apply*  
 21       *under subsection (a)(1), but for this paragraph, may*  
 22       *be made only with the approval of the appropriate*  
 23       *Federal banking agency (as defined in section 3(q) of*  
 24       *the Federal Deposit Insurance Act) with respect to*  
 25       *such bank.”.*

1       (d) *ANTITYING*.—Section 106(a) of the Bank Holding  
 2   Company Act Amendments of 1970 is amended by adding  
 3   at the end the following new sentence: “For purposes of this  
 4   section, a subsidiary of a national bank which engages in  
 5   activities pursuant to subsection (a)(2) or (b)(4) of section  
 6   5136A of the Revised Statutes of the United States shall  
 7   be deemed to be a subsidiary of a bank holding company,  
 8   and not a subsidiary of a bank.”.

9   **SEC. 123. MISREPRESENTATIONS REGARDING DEPOSITORY**  
 10                   **INSTITUTION LIABILITY FOR OBLIGATIONS**  
 11                   **OF AFFILIATES.**

12       (a) *IN GENERAL*.—Chapter 47 of title 18, United  
 13   States Code, is amended by inserting after section 1007 the  
 14   following new section:

15   **“§ 1008. Misrepresentations regarding financial insti-**  
 16                   **tution liability for obligations of affiliates**

17       “(a) *IN GENERAL*.—No institution-affiliated party of  
 18   an insured depository institution or institution-affiliated  
 19   party of a subsidiary or affiliate of an insured depository  
 20   institution shall fraudulently represent that the institution  
 21   is or will be liable for any obligation of a subsidiary or  
 22   other affiliate of the institution.

23       “(b) *CRIMINAL PENALTY*.—Whoever violates subsection  
 24   (a) shall be fined under this title, imprisoned for not more  
 25   than 5 years, or both.



(b) *CLERICAL AMENDMENT.*—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following new item:

15 *SEC. 124. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-*  
16 *SERVE ACT.*

**•S 900 EAH**

1 ***Subtitle D—Wholesale Financial***  
 2 ***Holding Companies; Wholesale***  
 3 ***Financial Institutions***

4 ***CHAPTER 1—WHOLESALE FINANCIAL***  
 5 ***HOLDING COMPANIES***

6 ***SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES ES-***  
 7 ***TABLISHED.***

8 *Section 10 of the Bank Holding Company Act of 1956*  
 9 *(12 U.S.C. 1841 et seq.) is amended to read as follows:*

10 ***“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.***

11 *“(a) COMPANIES THAT CONTROL WHOLESALE FINAN-*  
 12 *CIAL INSTITUTIONS.—*

13 *“(1) WHOLESALE FINANCIAL HOLDING COMPANY*  
 14 *DEFINED.—The term ‘wholesale financial holding*  
 15 *company’ means any company that—*

16 *“(A) is registered as a bank holding com-*  
 17 *pany;*

18 *“(B) is predominantly engaged in financial*  
 19 *activities as defined in section 6(f)(2);*

20 *“(C) controls one or more wholesale finan-*  
 21 *cial institutions;*

22 *“(D) does not control—*

23 *“(i) a bank other than a wholesale fi-*  
 24 *nancial institution;*

1                   “(ii) *an insured bank other than an*  
 2                   *institution permitted under subparagraph*  
 3                   *(D), (F), or (G) of section 2(c)(2); or*

4                   “(iii) *a savings association; and*

5                   “(E) *is not a foreign bank (as defined in*  
 6                   *section 1(b)(7) of the International Banking Act*  
 7                   *of 1978).*

8                   “(2) *SAVINGS ASSOCIATION TRANSITION PE-*  
 9                   *RIOD.—Notwithstanding paragraph (1)(D)(iii), the*  
 10                   *Board may permit a company that controls a savings*  
 11                   *association and that otherwise meets the requirements*  
 12                   *of paragraph (1) to become supervised under para-*  
 13                   *graph (1), if the company divests control of any such*  
 14                   *savings association within such period not to exceed*  
 15                   *5 years after becoming supervised under paragraph*  
 16                   *(1) as permitted by the Board.*

17                   “(b) *SUPERVISION BY THE BOARD.—*

18                   “(1) *IN GENERAL.—The provisions of this section*  
 19                   *shall govern the reporting, examination, and capital*  
 20                   *requirements of wholesale financial holding compa-*  
 21                   *nies.*

22                   “(2) *REPORTS.—*

23                   “(A) *IN GENERAL.—The Board from time to*  
 24                   *time may require any wholesale financial hold-*  
 25                   *ing company and any subsidiary of such com-*

pany to submit reports under oath to keep the  
Board informed as to—

“(i) the company’s or subsidiary’s activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions with depository institution subsidiaries of the holding company; and

“(ii) the extent to which the company or subsidiary has complied with the provisions of this Act and regulations prescribed and orders issued under this Act.

“(B) *USE OF EXISTING REPORTS.*—

“(i) *IN GENERAL.*—The Board shall, to the fullest extent possible, accept reports in fulfillment of the Board’s reporting requirements under this paragraph that the wholesale financial holding company or any subsidiary of such company has provided or been required to provide to other Federal and State supervisors or to appropriate self-regulatory organizations.

“(ii) *AVAILABILITY.*—A wholesale financial holding company or a subsidiary of such company shall provide to the Board, at

1           *the request of the Board, a report referred to*  
 2           *in clause (i).*

3           “(C) *EXEMPTIONS FROM REPORTING RE-*  
 4           *QUIREMENTS.—*

5                   “(i) *IN GENERAL.—The Board may, by*  
 6                   *regulation or order, exempt any company*  
 7                   *or class of companies, under such terms and*  
 8                   *conditions and for such periods as the*  
 9                   *Board shall provide in such regulation or*  
 10                  *order, from the provisions of this paragraph*  
 11                  *and any regulation prescribed under this*  
 12                  *paragraph.*

13                  “(ii) *CRITERIA FOR CONSIDERATION.—*  
 14                  *In making any determination under clause*  
 15                  *(i) with regard to any exemption under*  
 16                  *such clause, the Board shall consider,*  
 17                  *among such other factors as the Board may*  
 18                  *determine to be appropriate, the following*  
 19                  *factors:*

20                       “(I) *Whether information of the*  
 21                       *type required under this paragraph is*  
 22                       *available from a supervisory agency*  
 23                       *(as defined in section 1101(7) of the*  
 24                       *Right to Financial Privacy Act of*

1                   1978) or a foreign regulatory authority  
2                   of a similar type.

3                   “(II) The primary business of the  
4                   company.

5                   “(III) The nature and extent of  
6                   the domestic and foreign regulation of  
7                   the activities of the company.

8                   “(3) EXAMINATIONS.—

9                   “(A) LIMITED USE OF EXAMINATION AU-  
10                  THORITY.—The Board may make examinations  
11                  of each wholesale financial holding company and  
12                  each subsidiary of such company in order to—

13                  “(i) inform the Board regarding the  
14                  nature of the operations and financial con-  
15                  dition of the wholesale financial holding  
16                  company and its subsidiaries;

17                  “(ii) inform the Board regarding—

18                   “(I) the financial and operational  
19                   risks within the wholesale financial  
20                   holding company system that may af-  
21                   fect any depository institution owned  
22                   by such holding company; and

23                   “(II) the systems of the holding  
24                   company and its subsidiaries for mon-  
25                   itoring and controlling those risks; and

1           “(iii) monitor compliance with the  
 2           provisions of this Act and those governing  
 3           transactions and relationships between any  
 4           depository institution controlled by the  
 5           wholesale financial holding company and  
 6           any of the company’s other subsidiaries.

7           “(B) *RESTRICTED FOCUS OF EXAMINA-*  
 8           *TIONS.*—The Board shall, to the fullest extent  
 9           possible, limit the focus and scope of any exam-  
 10          ination of a wholesale financial holding com-  
 11          pany under this paragraph to—

12           “(i) the holding company; and

13           “(ii) any subsidiary (other than an in-  
 14          sured depository institution subsidiary) of  
 15          the holding company that, because of the  
 16          size, condition, or activities of the sub-  
 17          sidiary, the nature or size of transactions  
 18          between such subsidiary and any affiliated  
 19          depository institution, or the centralization  
 20          of functions within the holding company  
 21          system, could have a materially adverse ef-  
 22          fect on the safety and soundness of any de-  
 23          pository institution affiliate of the holding  
 24          company.

1           “(C) *DEFERENCE TO BANK EXAMINA-*  
 2           *TIONS.—The Board shall, to the fullest extent*  
 3           *possible, use the reports of examination of depos-*  
 4           *itory institutions made by the Comptroller of the*  
 5           *Currency, the Federal Deposit Insurance Cor-*  
 6           *poration, the Director of the Office of Thrift Su-*  
 7           *pervision or the appropriate State depository in-*  
 8           *stitution supervisory authority for the purposes*  
 9           *of this section.*

10           “(D) *DEFERENCE TO OTHER EXAMINA-*  
 11           *TIONS.—The Board shall, to the fullest extent*  
 12           *possible, address the circumstances which might*  
 13           *otherwise permit or require an examination by*  
 14           *the Board by forgoing an examination and by*  
 15           *instead reviewing the reports of examination*  
 16           *made of—*

17                   “(i) *any registered broker or dealer or*  
 18                   *any registered investment adviser by or on*  
 19                   *behalf of the Commission; and*

20                   “(ii) *any licensed insurance company*  
 21                   *by or on behalf of any State government in-*  
 22                   *surance agency responsible for the super-*  
 23                   *vision of the insurance company.*

24           “(E) *CONFIDENTIALITY OF REPORTED IN-*  
 25           *FORMATION.—*



1           “(i) *IN GENERAL.*—Notwithstanding  
2           any other provision of law, the Board shall  
3           not be compelled to disclose any nonpublic  
4           information required to be reported under  
5           this paragraph, or any information sup-  
6           plied to the Board by any domestic or for-  
7           eign regulatory agency, that relates to the  
8           financial or operational condition of any  
9           wholesale financial holding company or any  
10          subsidiary of such company.

11          “(ii) *COMPLIANCE WITH REQUESTS*  
12          *FOR INFORMATION.*—No provision of this  
13          subparagraph shall be construed as author-  
14          izing the Board to withhold information  
15          from the Congress, or preventing the Board  
16          from complying with a request for informa-  
17          tion from any other Federal department or  
18          agency for purposes within the scope of such  
19          department’s or agency’s jurisdiction, or  
20          from complying with any order of a court  
21          of competent jurisdiction in an action  
22          brought by the United States or the Board.

23          “(iii) *COORDINATION WITH OTHER*  
24          *LAW.*—For purposes of section 552 of title 5,  
25          United States Code, this subparagraph shall

1           *be considered to be a statute described in*  
 2           *subsection (b)(3)(B) of such section.*

3           “(iv) *DESIGNATION OF CONFIDENTIAL*  
 4           *INFORMATION.—In prescribing regulations*  
 5           *to carry out the requirements of this sub-*  
 6           *section, the Board shall designate informa-*  
 7           *tion described in or obtained pursuant to*  
 8           *this paragraph as confidential information.*

9           “(F) *COSTS.—The cost of any examination*  
 10          *conducted by the Board under this section may*  
 11          *be assessed against, and made payable by, the*  
 12          *wholesale financial holding company.*

13          “(4) *CAPITAL ADEQUACY GUIDELINES.—*

14               “(A) *CAPITAL ADEQUACY PROVISIONS.—*  
 15          *Subject to the requirements of, and solely in ac-*  
 16          *cordance with, the terms of this paragraph, the*  
 17          *Board may adopt capital adequacy rules or*  
 18          *guidelines for wholesale financial holding compa-*  
 19          *nies.*

20               “(B) *METHOD OF CALCULATION.—In devel-*  
 21          *oping rules or guidelines under this paragraph,*  
 22          *the following provisions shall apply:*

23                       “(i) *FOCUS ON DOUBLE LEVERAGE.—*  
 24                       *The Board shall focus on the use by whole-*  
 25                       *sale financial holding companies of debt*

1           *and other liabilities to fund capital invest-*  
 2           *ments in subsidiaries.*

3           “(ii)   *NO    UNWEIGHTED    CAPITAL*  
 4           *RATIO.—The Board shall not, by regulation,*  
 5           *guideline, order, or otherwise, impose under*  
 6           *this section a capital ratio that is not based*  
 7           *on appropriate risk-weighting consider-*  
 8           *ations.*

9           “(iii) *NO CAPITAL REQUIREMENT ON*  
 10           *REGULATED ENTITIES.—The Board shall*  
 11           *not, by regulation, guideline, order or other-*  
 12           *wise, prescribe or impose any capital or*  
 13           *capital adequacy rules, standards, guide-*  
 14           *lines, or requirements upon any subsidiary*  
 15           *that—*

16                   “(I) *is not a depository institu-*  
 17                   *tion; and*

18                   “(II) *is in compliance with appli-*  
 19                   *cable capital requirements of another*  
 20                   *Federal regulatory authority (includ-*  
 21                   *ing the Securities and Exchange Com-*  
 22                   *mission) or State insurance authority.*

23           “(iv) *LIMITATION.—The Board shall*  
 24           *not, by regulation, guideline, order or other-*  
 25           *wise, prescribe or impose any capital or*

1       *capital adequacy rules, standards, guide-*  
 2       *lines, or requirements upon any subsidiary*  
 3       *that is not a depository institution and that*  
 4       *is registered as an investment adviser under*  
 5       *the Investment Advisers Act of 1940, except*  
 6       *that this clause shall not be construed as*  
 7       *preventing the Board from imposing capital*  
 8       *or capital adequacy rules, guidelines, stand-*  
 9       *ards, or requirements with respect to activi-*  
 10       *ties of a registered investment adviser other*  
 11       *than investment advisory activities or ac-*  
 12       *tivities incidental to investment advisory*  
 13       *activities.*

14               “(v) *LIMITATIONS ON INDIRECT AC-*  
 15       *TION.—In developing, establishing, or as-*  
 16       *sessing holding company capital or capital*  
 17       *adequacy rules, guidelines, standards, or re-*  
 18       *quirements for purposes of this paragraph,*  
 19       *the Board shall not take into account the*  
 20       *activities, operations, or investments of an*  
 21       *affiliated investment company registered*  
 22       *under the Investment Company Act of 1940,*  
 23       *unless the investment company is—*

24               “(I) *a bank holding company; or*

1                   “(II) controlled by a bank holding  
 2                   company by reason of ownership by the  
 3                   bank holding company (including  
 4                   through all of its affiliates) of 25 per-  
 5                   cent or more of the shares of the invest-  
 6                   ment company, and the shares owned  
 7                   by the bank holding company have a  
 8                   market value equal to more than  
 9                   \$1,000,000.

10                  “(vi) *APPROPRIATE EXCLUSIONS.*—The  
 11                  Board shall take full account of—

12                   “(I) the capital requirements  
 13                   made applicable to any subsidiary that  
 14                   is not a depository institution by an-  
 15                   other Federal regulatory authority or  
 16                   State insurance authority; and

17                   “(II) industry norms for capital-  
 18                   ization of a company’s unregulated  
 19                   subsidiaries and activities.

20                  “(vii) *INTERNAL RISK MANAGEMENT*  
 21                  *MODELS.*—The Board may incorporate in-  
 22                  ternal risk management models of wholesale  
 23                  financial holding companies into its capital  
 24                  adequacy guidelines or rules and may take  
 25                  account of the extent to which resources of

1           *a subsidiary depository institution may be*  
 2           *used to service the debt or other liabilities of*  
 3           *the wholesale financial holding company.*

4           “(c) *NONFINANCIAL ACTIVITIES AND INVESTMENTS.*—

5           “(1) *GRANDFATHERED ACTIVITIES.*—

6           “(A) *IN GENERAL.*—*Notwithstanding sec-*  
 7           *tion 4(a), a company that becomes a wholesale*  
 8           *financial holding company may continue to en-*  
 9           *gage, directly or indirectly, in any activity and*  
 10           *may retain ownership and control of shares of a*  
 11           *company engaged in any activity if—*

12           “(i) *on the date of the enactment of the*  
 13           *Financial Services Act of 1999, such whole-*  
 14           *sale financial holding company was law-*  
 15           *fully engaged in that nonfinancial activity,*  
 16           *held the shares of such company, or had en-*  
 17           *tered into a contract to acquire shares of*  
 18           *any company engaged in such activity; and*

19           “(ii) *the company engaged in such ac-*  
 20           *tivity continues to engage only in the same*  
 21           *activities that such company conducted on*  
 22           *the date of the enactment of the Financial*  
 23           *Services Act of 1999, and other activities*  
 24           *permissible under this Act.*

1           “(B) *NO EXPANSION OF GRANDFATHERED*  
 2           *COMMERCIAL ACTIVITIES THROUGH MERGER OR*  
 3           *CONSOLIDATION.*—*A wholesale financial holding*  
 4           *company that engages in activities or holds*  
 5           *shares pursuant to this paragraph, or a sub-*  
 6           *sidary of such wholesale financial holding com-*  
 7           *pany, may not acquire, in any merger, consoli-*  
 8           *dation, or other type of business combination, as-*  
 9           *sets of any other company which is engaged in*  
 10           *any activity which the Board has not determined*  
 11           *to be financial in nature or incidental to activi-*  
 12           *ties that are financial in nature under section*  
 13           *6(c).*

14           “(C) *LIMITATION TO SINGLE EXEMPTION.*—  
 15           *No company that engages in any activity or con-*  
 16           *trols any shares under subsection (f) of section 6*  
 17           *may engage in any activity or own any shares*  
 18           *pursuant to this paragraph.*

19           “(2) *COMMODITIES.*—

20           “(A) *IN GENERAL.*—*Notwithstanding sec-*  
 21           *tion 4(a), a wholesale financial holding company*  
 22           *which was predominately engaged as of January*  
 23           *1, 1997, in financial activities in the United*  
 24           *States (or any successor to any such company)*  
 25           *may engage in, or directly or indirectly own or*

1       *control shares of a company engaged in, activi-*  
2       *ties related to the trading, sale, or investment in*  
3       *commodities and underlying physical properties*  
4       *that were not permissible for bank holding com-*  
5       *panies to conduct in the United States as of*  
6       *January 1, 1997, if such wholesale financial*  
7       *holding company, or any subsidiary of such*  
8       *holding company, was engaged directly, indi-*  
9       *rectly, or through any such company in any of*  
10       *such activities as of January 1, 1997, in the*  
11       *United States.*

12               “(B) *LIMITATION.*—*The attributed aggre-*  
13       *gate consolidated assets of a wholesale financial*  
14       *holding company held under the authority grant-*  
15       *ed under this paragraph and not otherwise per-*  
16       *mitted to be held by all wholesale financial hold-*  
17       *ing companies under this section may not exceed*  
18       *5 percent of the total consolidated assets of the*  
19       *wholesale financial holding company, except that*  
20       *the Board may increase such percentage of total*  
21       *consolidated assets by such amounts and under*  
22       *such circumstances as the Board considers ap-*  
23       *propriate, consistent with the purposes of this*  
24       *Act.*



1           “(3) *CROSS MARKETING RESTRICTIONS.*—A  
 2       *wholesale financial holding company shall not*  
 3       *permit—*

4           “(A) *any company whose shares it owns or*  
 5       *controls pursuant to paragraph (1) or (2) to*  
 6       *offer or market any product or service of an af-*  
 7       *filiated wholesale financial institution; or*

8           “(B) *any affiliated wholesale financial in-*  
 9       *stitution to offer or market any product or serv-*  
 10      *ice of any company whose shares are owned or*  
 11      *controlled by such wholesale financial holding*  
 12      *company pursuant to such paragraphs.*

13       “(d) *QUALIFICATION OF FOREIGN BANK AS WHOLE-*  
 14      *SALE FINANCIAL HOLDING COMPANY.*—

15       “(1) *IN GENERAL.*—*Any foreign bank, or any*  
 16      *company that owns or controls a foreign bank, that*  
 17      *operates a branch, agency, or commercial lending*  
 18      *company in the United States, including a foreign*  
 19      *bank or company that owns or controls a wholesale*  
 20      *financial institution, may request a determination*  
 21      *from the Board that such bank or company be treated*  
 22      *as a wholesale financial holding company other than*  
 23      *for purposes of subsection (c), subject to such condi-*  
 24      *tions as the Board considers appropriate, giving due*  
 25      *regard to the principle of national treatment and*

1 *equality of competitive opportunity and the require-*  
 2 *ments imposed on domestic banks and companies.*

3 “(2) *CONDITIONS FOR TREATMENT AS A WHOLE-*  
 4 *SALE FINANCIAL HOLDING COMPANY.*—*A foreign bank*  
 5 *and a company that owns or controls a foreign bank*  
 6 *may not be treated as a wholesale financial holding*  
 7 *company unless the bank and company meet and con-*  
 8 *tinue to meet the following criteria:*

9 “(A) *NO INSURED DEPOSITS.*—*No deposits*  
 10 *held directly by a foreign bank or through an af-*  
 11 *filiate (other than an institution described in*  
 12 *subparagraph (D) or (F) of section 2(c)(2)) are*  
 13 *insured under the Federal Deposit Insurance*  
 14 *Act.*

15 “(B) *CAPITAL STANDARDS.*—*The foreign*  
 16 *bank meets risk-based capital standards com-*  
 17 *parable to the capital standards required for a*  
 18 *wholesale financial institution, giving due re-*  
 19 *gard to the principle of national treatment and*  
 20 *equality of competitive opportunity.*

21 “(C) *TRANSACTION WITH AFFILIATES.*—  
 22 *Transactions between a branch, agency, or com-*  
 23 *mercial lending company subsidiary of the for-*  
 24 *ign bank in the United States, and any securi-*  
 25 *ties affiliate or company in which the foreign*

1        *bank (or any company that owns or controls*  
 2        *such foreign bank) has invested, directly or indi-*  
 3        *rectly, and which engages in any activity pursu-*  
 4        *ant to subsection (c) or (g) of section 6, comply*  
 5        *with the provisions of sections 23A and 23B of*  
 6        *the Federal Reserve Act in the same manner and*  
 7        *to the same extent as such transactions would be*  
 8        *required to comply with such sections if the bank*  
 9        *were a member bank.*

10        “(3) *TREATMENT AS A WHOLESALE FINANCIAL*  
 11        *INSTITUTION.—Any foreign bank which is, or is affili-*  
 12        *ated with a company which is, treated as a wholesale*  
 13        *financial holding company under this subsection shall*  
 14        *be treated as a wholesale financial institution for*  
 15        *purposes of subsections (c)(1)(C) and (c)(3) of section*  
 16        *9B of the Federal Reserve Act, and any such foreign*  
 17        *bank or company shall be subject to paragraphs (3),*  
 18        *(4), and (5) of section 9B(d) of the Federal Reserve*  
 19        *Act, except that the Board may adopt such modifica-*  
 20        *tions, conditions, or exemptions as the Board deems*  
 21        *appropriate, giving due regard to the principle of na-*  
 22        *tional treatment and equality of competitive oppor-*  
 23        *tunity.*

24        “(4) *SUPERVISION OF FOREIGN BANK WHICH*  
 25        *MAINTAINS NO BANKING PRESENCE OTHER THAN CON-*

1        *TROL OF A WHOLESALE FINANCIAL INSTITUTION.—A*  
 2        *foreign bank that owns or controls a wholesale finan-*  
 3        *cial institution but does not operate a branch, agency,*  
 4        *or commercial lending company in the United States*  
 5        *(and any company that owns or controls such foreign*  
 6        *bank) may request a determination from the Board*  
 7        *that such bank or company be treated as a wholesale*  
 8        *financial holding company, except that such bank or*  
 9        *company shall be subject to the restrictions of para-*  
 10       *graphs (2)(A) and (3) of this subsection.*

11        *“(5) NO EFFECT ON OTHER PROVISIONS.—This*  
 12        *section shall not be construed as limiting the author-*  
 13        *ity of the Board under the International Banking Act*  
 14        *of 1978 with respect to the regulation, supervision, or*  
 15        *examination of foreign banks and their offices and af-*  
 16        *filates in the United States.*

17        *“(6) APPLICABILITY OF COMMUNITY REINVEST-*  
 18        *MENT ACT OF 1977.—The branches in the United*  
 19        *States of a foreign bank that is, or is affiliated with*  
 20        *a company that is, treated as a wholesale financial*  
 21        *holding company shall be subject to section 9B(b)(11)*  
 22        *of the Federal Reserve Act as if the foreign bank were*  
 23        *a wholesale financial institution under such section.*  
 24        *The Board and the Comptroller of the Currency shall*  
 25        *apply the provisions of sections 803(2), 804, and*

1       807(1) of the *Community Reinvestment Act of 1977*  
 2       to branches of foreign banks which receive only such  
 3       deposits as are permissible for receipt by a corpora-  
 4       tion organized under section 25A of the *Federal Re-*  
 5       serve Act, in the same manner and to the same extent  
 6       such sections apply to such a corporation.”.

7   **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

8       (a) *FEDERAL RESERVE ACT.*—The last sentence of the  
 9       eighth undesignated paragraph of section 9 of the *Federal*  
 10      *Reserve Act* (12 U.S.C. 326) is amended to read as follows:  
 11      “The Board of Governors of the Federal Reserve System,  
 12      at its discretion, may furnish reports of examination or  
 13      other confidential supervisory information concerning State  
 14      member banks or any other entities examined under any  
 15      other authority of the Board to any Federal or State au-  
 16      thorities with supervisory or regulatory authority over the  
 17      examined entity, to officers, directors, or receivers of the ex-  
 18      amined entity, and to any other person that the Board de-  
 19      termines to be proper.”.

20      (b) *COMMODITY FUTURES TRADING COMMISSION.*—  
 21      *The Right to Financial Privacy Act of 1978* (12 U.S.C.  
 22      3401 et seq.) is amended—

23              (1) in section 1101(7) of the (12 U.S.C.  
 24      3401(7))—

1           (A) by redesignating subparagraphs (G)  
 2           and (H) as subparagraphs (H) and (I), respec-  
 3           tively; and

4           (B) by inserting after subparagraph (F) the  
 5           following new subparagraph:

6           “(G) the Commodity Futures Trading Com-  
 7           mission; or”; and

8           (2) in section 1112(e), by striking “and the Se-  
 9           curities and Exchange Commission” and inserting “,  
 10          the Securities and Exchange Commission, and the  
 11          Commodity Futures Trading Commission”.

12 **SEC. 133. CONFORMING AMENDMENTS.**

13       (a) *BANK HOLDING COMPANY ACT OF 1956.*—

14           (1) *DEFINITIONS.*—Section 2 of the *Bank Hold-*  
 15          *ing Company Act of 1956 (12 U.S.C. 1841)* is amend-  
 16          ed by inserting after subsection (p) (as added by sec-  
 17          tion 103(b)(1)) the following new subsections:

18          “(q) *WHOLESALE FINANCIAL INSTITUTION.*—The term  
 19          ‘wholesale financial institution’ means a wholesale finan-  
 20          cial institution subject to section 9B of the *Federal Reserve*  
 21          *Act.*

22          “(r) *COMMISSION.*—The term ‘Commission’ means the  
 23          *Securities and Exchange Commission.*

24          “(s) *DEPOSITORY INSTITUTION.*—The term ‘depository  
 25          institution’—

1           “(1) has the meaning given to such term in sec-  
2           tion 3 of the Federal Deposit Insurance Act; and

3           “(2) includes a wholesale financial institution.”.

4           (2) *DEFINITION OF BANK INCLUDES WHOLESALE*  
5           *FINANCIAL INSTITUTION.*—Section 2(c)(1) of the Bank  
6           Holding Company Act of 1956 (12 U.S.C. 1841(c)(1))  
7           is amended by adding at the end the following new  
8           subparagraph:

9           “(C) A wholesale financial institution.”.

10          (3) *INCORPORATED DEFINITIONS.*—Section 2(n)  
11          of the Bank Holding Company Act of 1956 (12  
12          U.S.C. 1841(n)) is amended by inserting “‘insured  
13          bank’,” after “‘in danger of default’,”.

14          (4) *EXCEPTION TO DEPOSIT INSURANCE RE-*  
15          *QUIREMENT.*—Section 3(e) of the Bank Holding Com-  
16          pany Act of 1956 (12 U.S.C. 1842(e)) is amended by  
17          adding at the end the following: “This subsection shall  
18          not apply to a wholesale financial institution.”.

19          (b) *FEDERAL DEPOSIT INSURANCE ACT.*—Section  
20          3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C.  
21          1813(q)(2)(A)) is amended to read as follows:

22                 “(A) any State member insured bank (ex-  
23                 cept a District bank) and any wholesale finan-  
24                 cial institution subject to section 9B of the Fed-  
25                 eral Reserve Act;”.

1       **CHAPTER 2—WHOLESALE FINANCIAL**  
 2                   **INSTITUTIONS**

3   **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

4       (a) NATIONAL WHOLESALE FINANCIAL INSTITU-  
 5   TIONS.—

6           (1) *IN GENERAL.*—Chapter 1 of title LXII of the  
 7       *Revised Statutes of the United States* (12 U.S.C. 21  
 8       *et seq.*) is amended by inserting after section 5136A  
 9       (as added by section 121(a) of this title) the following  
 10      new section:

11   **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**  
 12                   **TIONS.**

13       “(a) *AUTHORIZATION OF THE COMPTROLLER RE-*  
 14   *QUIRED.*—A national bank may apply to the Comptroller  
 15   on such forms and in accordance with such regulations as  
 16   the Comptroller may prescribe, for permission to operate  
 17   as a national wholesale financial institution.

18       “(b) *REGULATION.*—A national wholesale financial in-  
 19   stitution may exercise, in accordance with such institu-  
 20   tion’s articles of incorporation and regulations issued by  
 21   the Comptroller, all the powers and privileges of a national  
 22   bank formed in accordance with section 5133 of the *Revised*  
 23   *Statutes of the United States*, subject to section 9B of the  
 24   *Federal Reserve Act* and the limitations and restrictions  
 25   contained therein.



1       “(c) *COMMUNITY REINVESTMENT ACT OF 1977.*—A  
 2       *national wholesale financial institution shall be subject to*  
 3       *the Community Reinvestment Act of 1977.*

4               (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
 5       *tions for chapter 1 of title LXII of the Revised Stat-*  
 6       *utes of the United States is amended by inserting*  
 7       *after the item relating to section 5136A (as added by*  
 8       *section 121(d) of this title) the following new item:*

      “5136B. *National wholesale financial institutions.*”.

9               (b) *WHOLESALE FINANCIAL INSTITUTIONS.*—*The Fed-*  
 10       *eral Reserve Act (12 U.S.C. 221 et seq.) is amended by in-*  
 11       *serting after section 9A the following new section:*

12       **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

13       “(a) *APPLICATION FOR MEMBERSHIP AS WHOLESALE*  
 14       *FINANCIAL INSTITUTION.*—

15               “(1) *APPLICATION REQUIRED.*—

16               “(A) *IN GENERAL.*—*Any bank may apply*  
 17       *to the Board of Governors of the Federal Reserve*  
 18       *System to become a State wholesale financial in-*  
 19       *stitution, or to the Comptroller of the Currency*  
 20       *to become a national wholesale financial institu-*  
 21       *tion, and, as a wholesale financial institution, to*  
 22       *subscribe to the stock of the Federal Reserve bank*  
 23       *organized within the district where the applying*  
 24       *bank is located.*

1                   “(B) *TREATMENT AS MEMBER BANK.*—Any  
 2                   *application under subparagraph (A) shall be*  
 3                   *treated as an application under, and shall be*  
 4                   *subject to the provisions of, section 9.*

5                   “(2) *INSURANCE TERMINATION.*—No bank the de-  
 6                   *posits of which are insured under the Federal Deposit*  
 7                   *Insurance Act may become a wholesale financial in-*  
 8                   *stitution unless it has met all requirements under*  
 9                   *that Act for voluntary termination of deposit insur-*  
 10                   *ance.*

11                  “(b) *GENERAL REQUIREMENTS APPLICABLE TO*  
 12 *WHOLESALE FINANCIAL INSTITUTIONS.*—

13                   “(1) *FEDERAL RESERVE ACT.*—Except as other-  
 14                   *wise provided in this section, wholesale financial in-*  
 15                   *stitutions shall be member banks and shall be subject*  
 16                   *to the provisions of this Act that apply to member*  
 17                   *banks to the same extent and in the same manner as*  
 18                   *State member insured banks or national banks, except*  
 19                   *that a wholesale financial institution may terminate*  
 20                   *membership under this Act only with the prior writ-*  
 21                   *ten approval of the Board and on terms and condi-*  
 22                   *tions that the Board determines are appropriate to*  
 23                   *carry out the purposes of this Act.*

24                   “(2) *PROMPT CORRECTIVE ACTION.*—A wholesale  
 25                   *financial institution shall be deemed to be an insured*

1        *depository institution for purposes of section 38 of the*  
 2        *Federal Deposit Insurance Act except that—*

3                “(A) *the relevant capital levels and capital*  
 4                *measures for each capital category shall be the*  
 5                *levels specified by the Board for wholesale finan-*  
 6                *cial institutions;*

7                “(B) *subject to subparagraph (A), all ref-*  
 8                *erences to the appropriate Federal banking agen-*  
 9                *cy or to the Corporation in that section shall be*  
 10                *deemed to be references to the Comptroller of the*  
 11                *Currency, in the case of a national wholesale fi-*  
 12                *nancial institution, and to the Board, in the case*  
 13                *of all other wholesale financial institutions; and*

14                “(C) *in the case of wholesale financial insti-*  
 15                *tutions, the purpose of prompt corrective action*  
 16                *shall be to protect taxpayers and the financial*  
 17                *system from the risks associated with the oper-*  
 18                *ation and activities of wholesale financial insti-*  
 19                *tutions.*

20                “(3) *ENFORCEMENT AUTHORITY.—Section 3(u),*  
 21                *subsections (j) and (k) of section 7, subsections (b)*  
 22                *through (n), (s), (u), and (v) of section 8, and section*  
 23                *19 of the Federal Deposit Insurance Act shall apply*  
 24                *to a wholesale financial institution in the same man-*  
 25                *ner and to the same extent as such provisions apply*

1     *to State member insured banks or national banks, as*  
 2     *the case may be, and any reference in such sections*  
 3     *to an insured depository institution shall be deemed*  
 4     *to include a reference to a wholesale financial institu-*  
 5     *tion.*

6             “(4) *CERTAIN OTHER STATUTES APPLICABLE.—*  
 7     *A wholesale financial institution shall be deemed to*  
 8     *be a banking institution, and the Board shall be the*  
 9     *appropriate Federal banking agency for such bank*  
 10    *and all such bank’s affiliates, for purposes of the*  
 11    *International Lending Supervision Act.*

12            “(5) *BANK MERGER ACT.—A wholesale financial*  
 13    *institution shall be subject to sections 18(c) and 44 of*  
 14    *the Federal Deposit Insurance Act in the same man-*  
 15    *ner and to the same extent the wholesale financial in-*  
 16    *stitution would be subject to such sections if the insti-*  
 17    *tution were a State member insured bank or a na-*  
 18    *tional bank.*

19            “(6) *BRANCHING.—Notwithstanding any other*  
 20    *provision of law, a wholesale financial institution*  
 21    *may establish and operate a branch at any location*  
 22    *on such terms and conditions as established by, and*  
 23    *with the approval of—*

24                    “(A) *the Board, in the case of a State-char-*  
 25                    *tered wholesale financial institution; and*

1                   “(B) *the Comptroller of the Currency, in the*  
 2                   *case of a national bank wholesale financial insti-*  
 3                   *tution.*

4                   “(7) *ACTIVITIES OF OUT-OF-STATE BRANCHES OF*  
 5                   *WHOLESALE FINANCIAL INSTITUTIONS.—A State-char-*  
 6                   *tered wholesale financial institution shall be deemed*  
 7                   *to be a State bank and an insured State bank for*  
 8                   *purposes of paragraphs (1), (2), and (3) of section*  
 9                   *24(j) of the Federal Deposit Insurance Act.*

10                  “(8) *DISCRIMINATION REGARDING INTEREST*  
 11                  *RATES.—Section 27 of the Federal Deposit Insurance*  
 12                  *Act shall apply to State-chartered wholesale financial*  
 13                  *institutions in the same manner and to the same ex-*  
 14                  *tent as such provisions apply to State member in-*  
 15                  *sured banks and any reference in such section to a*  
 16                  *State-chartered insured depository institution shall be*  
 17                  *deemed to include a reference to a State-chartered*  
 18                  *wholesale financial institution.*

19                  “(9) *PREEMPTION OF STATE LAWS REQUIRING*  
 20                  *DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL IN-*  
 21                  *STITUTIONS.—The appropriate State banking author-*  
 22                  *ity may grant a charter to a wholesale financial in-*  
 23                  *stitution notwithstanding any State constitution or*  
 24                  *statute requiring that the institution obtain insurance*  
 25                  *of its deposits and any such State constitution or*

1       *statute is hereby preempted solely for purposes of this*  
 2       *paragraph.*

3               “(10) *PARITY FOR WHOLESALE FINANCIAL INSTI-*  
 4       *TUTIONS.—A State bank that is a wholesale financial*  
 5       *institution under this section shall have all of the*  
 6       *rights, powers, privileges, and immunities (including*  
 7       *those derived from status as a federally chartered in-*  
 8       *stitution) of and as if it were a national bank, subject*  
 9       *to such terms and conditions as established by the*  
 10       *Board.*

11              “(11) *COMMUNITY REINVESTMENT ACT OF*  
 12       *1977.—A State wholesale financial institution shall be*  
 13       *subject to the Community Reinvestment Act of 1977.*

14              “(c) *SPECIFIC REQUIREMENTS APPLICABLE TO*  
 15       *WHOLESALE FINANCIAL INSTITUTIONS.—*

16              “(1) *LIMITATIONS ON DEPOSITS.—*

17              “(A) *MINIMUM AMOUNT.—*

18              “(i) *IN GENERAL.—No wholesale finan-*  
 19       *cial institution may receive initial deposits*  
 20       *of \$100,000 or less, other than on an inci-*  
 21       *dental and occasional basis.*

22              “(ii) *LIMITATION ON DEPOSITS OF*  
 23       *LESS THAN \$100,000.—No wholesale finan-*  
 24       *cial institution may receive initial deposits*  
 25       *of \$100,000 or less if such deposits con-*

1                    *stitute more than 5 percent of the institu-*  
 2                    *tion's total deposits.*

3                    “(B) *NO DEPOSIT INSURANCE.—Except as*  
 4                    *otherwise provided in section 8A(f) of the Federal*  
 5                    *Deposit Insurance Act, no deposits held by a*  
 6                    *wholesale financial institution shall be insured*  
 7                    *deposits under the Federal Deposit Insurance*  
 8                    *Act.*

9                    “(C) *ADVERTISING AND DISCLOSURE.—The*  
 10                    *Board and the Comptroller of the Currency shall*  
 11                    *prescribe jointly regulations pertaining to adver-*  
 12                    *tising and disclosure by wholesale financial in-*  
 13                    *stitutions to ensure that each depositor is noti-*  
 14                    *fied that deposits at the wholesale financial in-*  
 15                    *stitution are not federally insured or otherwise*  
 16                    *guaranteed by the United States Government.*

17                    “(2) *MINIMUM CAPITAL LEVELS APPLICABLE TO*  
 18                    *WHOLESALE FINANCIAL INSTITUTIONS.—The Board*  
 19                    *shall, by regulation, adopt capital requirements for*  
 20                    *wholesale financial institutions—*

21                    “(A) *to account for the status of wholesale*  
 22                    *financial institutions as institutions that accept*  
 23                    *deposits that are not insured under the Federal*  
 24                    *Deposit Insurance Act; and*

1           “(B) to provide for the safe and sound oper-  
 2           ation of the wholesale financial institution with-  
 3           out undue risk to creditors or other persons, in-  
 4           cluding Federal Reserve banks, engaged in trans-  
 5           actions with the bank.

6           “(3) *ADDITIONAL REQUIREMENTS APPLICABLE*  
 7           *TO WHOLESALE FINANCIAL INSTITUTIONS.*—In addi-  
 8           tion to any requirement otherwise applicable to State  
 9           member insured banks or applicable, under this sec-  
 10          tion, to wholesale financial institutions, the Board  
 11          may impose, by regulation or order, upon wholesale  
 12          financial institutions—

13               “(A) limitations on transactions, direct or  
 14               indirect, with affiliates to prevent—

15                       “(i) the transfer of risk to the deposit  
 16                       insurance funds; or

17                       “(ii) an affiliate from gaining access  
 18                       to, or the benefits of, credit from a Federal  
 19                       Reserve bank, including overdrafts at a  
 20                       Federal Reserve bank;

21               “(B) special clearing balance requirements;  
 22               and

23               “(C) any additional requirements that the  
 24               Board determines to be appropriate or necessary  
 25               to—



1                   “(i) *promote the safety and soundness*  
 2                   *of the wholesale financial institution or any*  
 3                   *insured depository institution affiliate of*  
 4                   *the wholesale financial institution;*

5                   “(ii) *prevent the transfer of risk to the*  
 6                   *deposit insurance funds; or*

7                   “(iii) *protect creditors and other per-*  
 8                   *sons, including Federal Reserve banks, en-*  
 9                   *gaged in transactions with the wholesale fi-*  
 10                   *nanical institution.*

11                   “(4) *EXEMPTIONS FOR WHOLESALE FINANCIAL*  
 12                   *INSTITUTIONS.—The Board may, by regulation or*  
 13                   *order, exempt any wholesale financial institution*  
 14                   *from any provision applicable to a member bank that*  
 15                   *is not a wholesale financial institution, if the Board*  
 16                   *finds that such exemption is consistent with—*

17                   “(A) *the promotion of the safety and sound-*  
 18                   *ness of the wholesale financial institution or any*  
 19                   *insured depository institution affiliate of the*  
 20                   *wholesale financial institution;*

21                   “(B) *the protection of the deposit insurance*  
 22                   *funds; and*

23                   “(C) *the protection of creditors and other*  
 24                   *persons, including Federal Reserve banks, en-*

1           gaged in transactions with the wholesale finan-  
2           cial institution.

3           “(5) *LIMITATION ON TRANSACTIONS BETWEEN A*  
4           *WHOLESALE FINANCIAL INSTITUTION AND AN IN-*  
5           *SURED BANK.*—For purposes of section 23A(d)(1) of  
6           the Federal Reserve Act, a wholesale financial institu-  
7           tion that is affiliated with an insured bank shall not  
8           be a bank.

9           “(6) *NO EFFECT ON OTHER PROVISIONS.*—This  
10          section shall not be construed as limiting the Board’s  
11          authority over member banks or the authority of the  
12          Comptroller of the Currency over national banks  
13          under any other provision of law, or to create any ob-  
14          ligation for any Federal Reserve bank to make, in-  
15          crease, renew, or extend any advance or discount  
16          under this Act to any member bank or other deposi-  
17          tory institution.

18          “(d) *CAPITAL AND MANAGERIAL REQUIREMENTS.*—

19                 “(1) *IN GENERAL.*—A wholesale financial insti-  
20                 tution shall be well capitalized and well managed.

21                 “(2) *NOTICE TO COMPANY.*—The Board shall  
22                 promptly provide notice to a company that controls  
23                 a wholesale financial institution whenever such whole-  
24                 sale financial institution is not well capitalized or  
25                 well managed.

1           “(3) *AGREEMENT TO RESTORE INSTITUTION.*—  
 2           *Not later than 45 days after the date of receipt of a*  
 3           *notice under paragraph (2) (or such additional pe-*  
 4           *riod not to exceed 90 days as the Board may permit),*  
 5           *the company shall execute an agreement acceptable to*  
 6           *the Board to restore the wholesale financial institu-*  
 7           *tion to compliance with all of the requirements of*  
 8           *paragraph (1).*

9           “(4) *LIMITATIONS UNTIL INSTITUTION RE-*  
 10          *STORED.*—*Until the wholesale financial institution is*  
 11          *restored to compliance with all of the requirements of*  
 12          *paragraph (1), the Board may impose such limita-*  
 13          *tions on the conduct or activities of the company or*  
 14          *any affiliate of the company as the Board determines*  
 15          *to be appropriate under the circumstances.*

16          “(5) *FAILURE TO RESTORE.*—*If the company*  
 17          *does not execute and implement an agreement in ac-*  
 18          *cordance with paragraph (3), comply with any limi-*  
 19          *tation imposed under paragraph (4), restore the*  
 20          *wholesale financial institution to well capitalized sta-*  
 21          *tus not later than 180 days after the date of receipt*  
 22          *by the company of the notice described in paragraph*  
 23          *(2), or restore the wholesale financial institution to*  
 24          *well managed status within such period as the Board*  
 25          *may permit, the company shall, under such terms*

1       *and conditions as may be imposed by the Board sub-*  
 2       *ject to such extension of time as may be granted in*  
 3       *the discretion of the Board, divest control of its sub-*  
 4       *sidary depository institutions.*

5               “(6) *WELL MANAGED DEFINED.*—*For purposes of*  
 6       *this subsection, the term ‘well managed’ has the same*  
 7       *meaning as in section 2 of the Bank Holding Com-*  
 8       *pany Act of 1956.*

9               “(e) *RESOLUTION OF WHOLESALE FINANCIAL INSTI-*  
 10       *TUTIONS.*—

11               “(1) *CONSERVATORSHIP OR RECEIVERSHIP.*—

12               “(A) *APPOINTMENT.*—*The Board may ap-*  
 13       *point a conservator or receiver to take possession*  
 14       *and control of a wholesale financial institution*  
 15       *to the same extent and in the same manner as*  
 16       *the Comptroller of the Currency may appoint a*  
 17       *conservator or receiver for a national bank.*

18               “(B) *POWERS.*—*The conservator or receiver*  
 19       *for a wholesale financial institution shall exer-*  
 20       *cise the same powers, functions, and duties, sub-*  
 21       *ject to the same limitations, as a conservator or*  
 22       *receiver for a national bank.*

23               “(2) *BOARD AUTHORITY.*—*The Board shall have*  
 24       *the same authority with respect to any conservator or*  
 25       *receiver appointed under paragraph (1), and the*

1     *wholesale financial institution for which it has been*  
 2     *appointed, as the Comptroller of the Currency has*  
 3     *with respect to a conservator or receiver for a na-*  
 4     *tional bank and the national bank for which the con-*  
 5     *servator or receiver has been appointed.*

6             “(3) *BANKRUPTCY PROCEEDINGS.*—*The Comp-*  
 7     *troller of the Currency (in the case of a national*  
 8     *wholesale financial institution) or the Board may di-*  
 9     *rect the conservator or receiver of a wholesale finan-*  
 10    *cial institution to file a petition pursuant to title 11,*  
 11    *United States Code, in which case, title 11, United*  
 12    *States Code, shall apply to the wholesale financial in-*  
 13    *stitution in lieu of otherwise applicable Federal or*  
 14    *State insolvency law.*

15           “(f) *BOARD BACKUP AUTHORITY.*—

16           “(1) *NOTICE TO THE COMPTROLLER.*—*Before*  
 17    *taking any action under section 8 of the Federal De-*  
 18    *posit Insurance Act involving a wholesale financial*  
 19    *institution that is chartered as a national bank, the*  
 20    *Board shall notify the Comptroller and recommend*  
 21    *that the Comptroller take appropriate action. If the*  
 22    *Comptroller fails to take the recommended action or*  
 23    *to provide an acceptable plan for addressing the con-*  
 24    *cerns of the Board before the close of the 30-day pe-*  
 25    *riod beginning on the date of receipt of the formal*

1        *recommendation from the Board, the Board may take*  
 2        *such action.*

3            “(2)    *EXIGENT    CIRCUMSTANCES.—Notwith-*  
 4        *standing paragraph (1), the Board may exercise its*  
 5        *authority without regard to the time period set forth*  
 6        *in paragraph (1) where the Board finds that exigent*  
 7        *circumstances exist and the Board notifies the Comp-*  
 8        *troller of the Board’s action and of the exigent cir-*  
 9        *cumstances.*

10          “(g) *EXCLUSIVE JURISDICTION.—Subsections (c) and*  
 11        *(e) of section 43 of the Federal Deposit Insurance Act shall*  
 12        *not apply to any wholesale financial institution.”.*

13          (c) *VOLUNTARY TERMINATION OF INSURED STATUS BY*  
 14        *CERTAIN INSTITUTIONS.—*

15            (1) *SECTION 8 DESIGNATIONS.—Section 8(a) of*  
 16        *the Federal Deposit Insurance Act (12 U.S.C.*  
 17        *1818(a)) is amended—*

18                    (A) *by striking paragraph (1); and*

19                    (B) *by redesignating paragraphs (2)*  
 20        *through (10) as paragraphs (1) through (9), re-*  
 21        *spectively.*

22            (2) *VOLUNTARY TERMINATION OF INSURED STA-*  
 23        *TUS.—The Federal Deposit Insurance Act (12 U.S.C.*  
 24        *1811 et seq.) is amended by inserting after section 8*  
 25        *the following new section:*

1 **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**  
 2 **SURED DEPOSITORY INSTITUTION.**

3 “(a) *IN GENERAL.*—*Except as provided in subsection*  
 4 *(b), an insured State bank or a national bank may volun-*  
 5 *tarily terminate such bank’s status as an insured depository*  
 6 *institution in accordance with regulations of the Corpora-*  
 7 *tion if—*

8 “(1) *the bank provides written notice of the*  
 9 *bank’s intent to terminate such insured status—*

10 “(A) *to the Corporation and the Board of*  
 11 *Governors of the Federal Reserve System, in the*  
 12 *case of an insured State bank, or to the Corpora-*  
 13 *tion and the Comptroller of the Currency, in the*  
 14 *case of an insured national bank authorized to*  
 15 *operate as a wholesale financial institution, not*  
 16 *less than 6 months before the effective date of*  
 17 *such termination; and*

18 “(B) *to all depositors at such bank, not less*  
 19 *than 6 months before the effective date of the ter-*  
 20 *mination of such status; and*

21 “(2) *either—*

22 “(A) *the deposit insurance fund of which*  
 23 *such bank is a member equals or exceeds the*  
 24 *fund’s designated reserve ratio as of the date the*  
 25 *bank provides a written notice under paragraph*  
 26 *(1) and the Corporation determines that the fund*

1           *will equal or exceed the applicable designated re-*  
 2           *serve ratio for the 2 semiannual assessment peri-*  
 3           *ods immediately following such date; or*

4           “(B) *the Corporation and the Board of Gov-*  
 5           *ernors of the Federal Reserve System, in the case*  
 6           *of an insured State bank, or the Corporation and*  
 7           *the Comptroller of the Currency, in the case of*  
 8           *an insured national bank authorized to operate*  
 9           *as a wholesale financial institution, has ap-*  
 10          *proved the termination of the bank’s insured sta-*  
 11          *tus and the bank pays an exit fee in accordance*  
 12          *with subsection (e).*

13          “(b) *EXCEPTION.—Subsection (a) shall not apply with*  
 14          *respect to—*

15               “(1) *an insured savings association; or*

16               “(2) *an insured branch that is required to be in-*  
 17          *sured under subsection (a) or (b) of section 6 of the*  
 18          *International Banking Act of 1978.*

19          “(c) *ELIGIBILITY FOR INSURANCE TERMINATED.—*  
 20          *Any bank that voluntarily elects to terminate the bank’s*  
 21          *insured status under subsection (a) shall not be eligible for*  
 22          *insurance on any deposits or any assistance authorized*  
 23          *under this Act after the period specified in subsection (f)(1).*

24          “(d) *INSTITUTION MUST BECOME WHOLESALE FINAN-*  
 25          *CIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING AC-*



1 *TIVITIES.—Any depository institution which voluntarily*  
 2 *terminates such institution’s status as an insured deposi-*  
 3 *tory institution under this section may not, upon termi-*  
 4 *nation of insurance, accept any deposits unless the institu-*  
 5 *tion is a wholesale financial institution subject to section*  
 6 *9B of the Federal Reserve Act.*

7 “(e) *EXIT FEES.—*

8 “(1) *IN GENERAL.—Any bank that voluntarily*  
 9 *terminates such bank’s status as an insured deposi-*  
 10 *tory institution under this section shall pay an exit*  
 11 *fee in an amount that the Corporation determines is*  
 12 *sufficient to account for the institution’s pro rata*  
 13 *share of the amount (if any) which would be required*  
 14 *to restore the relevant deposit insurance fund to the*  
 15 *fund’s designated reserve ratio as of the date the bank*  
 16 *provides a written notice under subsection (a)(1).*

17 “(2) *PROCEDURES.—The Corporation shall pre-*  
 18 *scribe, by regulation, procedures for assessing any exit*  
 19 *fee under this subsection.*

20 “(f) *TEMPORARY INSURANCE OF DEPOSITS INSURED*  
 21 *AS OF TERMINATION.—*

22 “(1) *TRANSITION PERIOD.—The insured deposits*  
 23 *of each depositor in a State bank or a national bank*  
 24 *on the effective date of the voluntary termination of*  
 25 *the bank’s insured status, less all subsequent with-*

1       drawals from any deposits of such depositor, shall  
 2       continue to be insured for a period of not less than  
 3       6 months and not more than 2 years, as determined  
 4       by the Corporation. During such period, no additions  
 5       to any such deposits, and no new deposits in the de-  
 6       pository institution made after the effective date of  
 7       such termination shall be insured by the Corporation.

8               “(2) *TEMPORARY ASSESSMENTS; OBLIGATIONS*  
 9       *AND DUTIES.*—During the period specified in para-  
 10      graph (1) with respect to any bank, the bank shall  
 11      continue to pay assessments under section 7 as if the  
 12      bank were an insured depository institution. The  
 13      bank shall, in all other respects, be subject to the au-  
 14      thority of the Corporation and the duties and obliga-  
 15      tions of an insured depository institution under this  
 16      Act during such period, and in the event that the  
 17      bank is closed due to an inability to meet the de-  
 18      mands of the bank’s depositors during such period,  
 19      the Corporation shall have the same powers and  
 20      rights with respect to such bank as in the case of an  
 21      insured depository institution.

22              “(g) *ADVERTISEMENTS.*—

23              “(1) *IN GENERAL.*—A bank that voluntarily ter-  
 24      minates the bank’s insured status under this section  
 25      shall not advertise or hold itself out as having insured

1       *deposits, except that the bank may advertise the tem-*  
 2       *porary insurance of deposits under subsection (f) if,*  
 3       *in connection with any such advertisement, the adver-*  
 4       *tisement also states with equal prominence that addi-*  
 5       *tions to deposits and new deposits made after the ef-*  
 6       *fective date of the termination are not insured.*

7               “(2) *CERTIFICATES OF DEPOSIT, OBLIGATIONS,*  
 8       *AND SECURITIES.*—*Any certificate of deposit or other*  
 9       *obligation or security issued by a State bank or a na-*  
 10       *tional bank after the effective date of the voluntary*  
 11       *termination of the bank’s insured status under this*  
 12       *section shall be accompanied by a conspicuous,*  
 13       *prominently displayed notice that such certificate of*  
 14       *deposit or other obligation or security is not insured*  
 15       *under this Act.*

16              “(h) *NOTICE REQUIREMENTS.*—

17               “(1) *NOTICE TO THE CORPORATION.*—*The notice*  
 18       *required under subsection (a)(1)(A) shall be in such*  
 19       *form as the Corporation may require.*

20               “(2) *NOTICE TO DEPOSITORS.*—*The notice re-*  
 21       *quired under subsection (a)(1)(B) shall be—*

22                       “(A) *sent to each depositor’s last address of*  
 23       *record with the bank; and*

1           “(B) in such manner and form as the Cor-  
 2           poration finds to be necessary and appropriate  
 3           for the protection of depositors.”.

4           (3) *DEFINITION.*—Section 19(b)(1)(A)(i) of the  
 5           *Federal Reserve Act* (12 U.S.C. 461(b)(1)(A)(i)) is  
 6           amended by inserting “, or any wholesale financial  
 7           institution subject to section 9B of this Act” after  
 8           “such Act”.

9           (d) *TECHNICAL AND CONFORMING AMENDMENTS TO*  
 10          *THE BANKRUPTCY CODE.*—

11           (1) *BANKRUPTCY CODE DEBTORS.*—Section  
 12          109(b)(2) of title 11, *United States Code*, is amended  
 13          by striking “; or” and inserting the following: “, ex-  
 14          cept that—

15                 “(A) a wholesale financial institution estab-  
 16                 lished under section 5136B of the *Revised Stat-*  
 17                 *utes of the United States* or section 9B of the  
 18                 *Federal Reserve Act* may be a debtor if a peti-  
 19                 tion is filed at the direction of the Comptroller  
 20                 of the Currency (in the case of a wholesale finan-  
 21                 cial institution established under section 5136B  
 22                 of the *Revised Statutes of the United States*) or  
 23                 the Board of Governors of the *Federal Reserve*  
 24                 System (in the case of any wholesale financial  
 25                 institution); and

1           “(B) a corporation organized under section  
 2           25A of the Federal Reserve Act may be a debtor  
 3           if a petition is filed at the direction of the Board  
 4           of Governors of the Federal Reserve System; or”.

5           (2) CHAPTER 7 DEBTORS.—Section 109(d) of  
 6           title 11, United States Code, is amended to read as  
 7           follows:

8           “(d) Only a railroad and a person that may be a debt-  
 9           or under chapter 7 of this title, except that a stockbroker,  
 10          a wholesale financial institution established under section  
 11          5136B of the Revised Statutes of the United States or sec-  
 12          tion 9B of the Federal Reserve Act, a corporation organized  
 13          under section 25A of the Federal Reserve Act, or a com-  
 14          modity broker, may be a debtor under chapter 11 of this  
 15          title.”.

16          (3) DEFINITION OF FINANCIAL INSTITUTION.—  
 17          Section 101(22) of title 11, United States Code, is  
 18          amended to read as follows:

19          “(22) ‘financial institution’ means a person that  
 20          is a commercial or savings bank, industrial savings  
 21          bank, savings and loan association, trust company,  
 22          wholesale financial institution established under sec-  
 23          tion 5136B of the Revised Statutes of the United  
 24          States or section 9B of the Federal Reserve Act, or  
 25          corporation organized under section 25A of the Fed-

1        *eral Reserve Act and, when any such person is acting*  
 2        *as agent or custodian for a customer in connection*  
 3        *with a securities contract, as defined in section 741*  
 4        *of this title, such customer,”.*

5            (4) *SUBCHAPTER V OF CHAPTER 7.—*

6            (A) *IN GENERAL.—Section 103 of title 11,*  
 7            *United States Code, is amended—*

8            (i) *by redesignating subsections (e)*  
 9            *through (i) as subsections (f) through (j), re-*  
 10           *spectively; and*

11           (ii) *by inserting after subsection (d)*  
 12           *the following:*

13        “(e) *Subchapter V of chapter 7 of this title applies only*  
 14        *in a case under such chapter concerning the liquidation of*  
 15        *a wholesale financial institution established under section*  
 16        *5136B of the Revised Statutes of the United States or sec-*  
 17        *tion 9B of the Federal Reserve Act, or a corporation orga-*  
 18        *nized under section 25A of the Federal Reserve Act.”.*

19           (B) *WHOLESALE BANK LIQUIDATION.—*

20           *Chapter 7 of title 11, United States Code, is*  
 21           *amended by adding at the end the following:*

22           “*SUBCHAPTER V—WHOLESALE BANK*  
 23           *LIQUIDATION*

24        “**§ 781. Definitions for subchapter**

25        “*In this subchapter—*

1           “(1) the term ‘Board’ means the Board of Gov-  
2           ernors of the Federal Reserve System;

3           “(2) the term ‘depository institution’ has the  
4           same meaning as in section 3 of the Federal Deposit  
5           Insurance Act, and includes any wholesale bank;

6           “(3) the term ‘national wholesale financial insti-  
7           tution’ means a wholesale financial institution estab-  
8           lished under section 5136B of the Revised Statutes of  
9           the United States; and

10          “(4) the term ‘wholesale bank’ means a national  
11          wholesale financial institution, a wholesale financial  
12          institution established under section 9B of the Federal  
13          Reserve Act, or a corporation organized under section  
14          25A of the Federal Reserve Act.

15      **“§ 782. Selection of trustee**

16          “(a) Notwithstanding any other provision of this title,  
17          the conservator or receiver who files the petition shall be  
18          the trustee under this chapter, unless the Comptroller of the  
19          Currency (in the case of a national wholesale financial in-  
20          stitution for which it appointed the conservator or receiver)  
21          or the Board (in the case of any wholesale bank for which  
22          it appointed the conservator or receiver) designates an al-  
23          ternative trustee. The Comptroller of the Currency or the  
24          Board (as applicable) may designate a successor trustee, if  
25          required.

1       “(b) Whenever the Comptroller of the Currency or the  
 2 Board appoints or designates a trustee, chapter 3 and sec-  
 3 tions 704 and 705 of this title shall apply to the Comp-  
 4 troller or the Board, as applicable, in the same way and  
 5 to the same extent that they apply to a United States trust-  
 6 ee.

7       **“§ 783. Additional powers of trustee**

8       “(a) The trustee under this subchapter has power to  
 9 distribute property not of the estate, including distributions  
 10 to customers that are mandated by subchapters III and Iv  
 11 of this chapter.

12       “(b) The trustee under this subchapter may, after no-  
 13 tice and a hearing—

14               “(1) sell the wholesale bank to a depository insti-  
 15 tution or consortium of depository institutions (which  
 16 consortium may agree on the allocation of the whole-  
 17 sale bank among the consortium);

18               “(2) merge the wholesale bank with a depository  
 19 institution;

20               “(3) transfer contracts to the same extent as  
 21 could a receiver for a depository institution under  
 22 paragraphs (9) and (10) of section 11(e) of the Fed-  
 23 eral Deposit Insurance Act;

24               “(4) transfer assets or liabilities to a depository  
 25 institution;



1           “(5) transfer assets and liabilities to a bridge  
 2           bank as provided in paragraphs (1), (3)(A), (5), (6),  
 3           and (9) through (13), and subparagraphs (A) through  
 4           (H) and (K) of paragraph (4) of section 11(n) of the  
 5           Federal Deposit Insurance Act, except that—

6                   “(A) the bridge bank shall be treated as a  
 7           wholesale bank for the purpose of this subsection;  
 8           and

9                   “(B) any references in any such provision  
 10          of law to the Federal Deposit Insurance Corpora-  
 11          tion shall be construed to be references to the ap-  
 12          pointing agency and that references to deposit  
 13          insurance shall be omitted.

14          “(c) Any reference in this section to transfers of liabil-  
 15          ities includes a ratable transfer of liabilities within a pri-  
 16          ority class.

17   **“§ 784. Right to be heard**

18          “The Comptroller of the Currency (in the case of a na-  
 19          tional wholesale financial institution), the Board (in the  
 20          case of any wholesale bank), or a Federal Reserve bank (in  
 21          the case of a wholesale bank that is a member of that bank)  
 22          may raise and may appear and be heard on any issue in  
 23          a case under this subchapter.

24                   (C) CONFORMING AMENDMENT.—The table  
 25          of sections for chapter 7 of title 11, United States

1           *Code, is amended by adding at the end the fol-*  
 2           *lowing:*

“SUBCHAPTER V—WHOLESALE BANK LIQUIDATION

“781. *Definitions for subchapter.*

“782. *Selection of trustee.*

“783. *Additional powers of trustee.*

“784. *Right to be heard.*”.

3           *(e) RESOLUTION OF EDGE CORPORATIONS.—The six-*  
 4           *teenth undesignated paragraph of section 25A of the Federal*  
 5           *Reserve Act (12 U.S.C. 624) is amended to read as follows:*

6           “(16) *APPOINTMENT OF RECEIVER OR CONSER-*  
 7           *VATOR.—*

8           “(A) *IN GENERAL.—The Board may ap-*  
 9           *point a conservator or receiver for a corporation*  
 10           *organized under the provisions of this section to*  
 11           *the same extent and in the same manner as the*  
 12           *Comptroller of the Currency may appoint a con-*  
 13           *servator or receiver for a national bank, and the*  
 14           *conservator or receiver for such corporation shall*  
 15           *exercise the same powers, functions, and duties,*  
 16           *subject to the same limitations, as a conservator*  
 17           *or receiver for a national bank.*

18           “(B) *EQUIVALENT AUTHORITY.—The Board*  
 19           *shall have the same authority with respect to any*  
 20           *conservator or receiver appointed for a corpora-*  
 21           *tion organized under the provisions of this sec-*  
 22           *tion under this paragraph and any such cor-*

poration as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

“(C) *TITLE 11 PETITIONS.*—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.”.

## ***Subtitle E—Preservation of FTC Authority***

### ***SEC. 141. AMENDMENT TO THE BANK HOLDING COMPANY ACT OF 1956 TO MODIFY NOTIFICATION AND POST-APPROVAL WAITING PERIOD FOR SECTION 3 TRANSACTIONS.***

Section 11(b)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1849(b)(1)) is amended by inserting “and, if the transaction also involves an acquisition under section 4 or section 6, the Board shall also notify the Federal Trade Commission of such approval” before the period at the end of the first sentence.

1 **SEC. 142. INTERAGENCY DATA SHARING.**

2       *To the extent not prohibited by other law, the Comp-*  
 3 *troller of the Currency, the Director of the Office of Thrift*  
 4 *Supervision, the Federal Deposit Insurance Corporation,*  
 5 *and the Board of Governors of the Federal Reserve System*  
 6 *shall make available to the Attorney General and the Fed-*  
 7 *eral Trade Commission any data in the possession of any*  
 8 *such banking agency that the antitrust agency deems nec-*  
 9 *essary for antitrust review of any transaction requiring no-*  
 10 *tice to any such antitrust agency or the approval of such*  
 11 *agency under section 3, 4, or 6 of the Bank Holding Com-*  
 12 *pany Act of 1956, section 18(c) of the Federal Deposit In-*  
 13 *surance Act, the National Bank Consolidation and Merger*  
 14 *Act, section 10 of the Home Owners' Loan Act, or the anti-*  
 15 *trust laws.*

16 **SEC. 143. CLARIFICATION OF STATUS OF SUBSIDIARIES**  
 17 **AND AFFILIATES.**

18       *(a) CLARIFICATION OF FEDERAL TRADE COMMISSION*  
 19 *JURISDICTION.—Any person which directly or indirectly*  
 20 *controls, is controlled directly or indirectly by, or is directly*  
 21 *or indirectly under common control with, any bank or sav-*  
 22 *ings association (as such terms are defined in section 3 of*  
 23 *the Federal Deposit Insurance Act) and is not itself a bank*  
 24 *or savings association shall not be deemed to be a bank or*  
 25 *savings association for purposes of the Federal Trade Com-*

1 *mission Act or any other law enforced by the Federal Trade*  
 2 *Commission.*

3 (b) *SAVINGS PROVISION.*—*No provision of this section*  
 4 *shall be construed as restricting the authority of any Fed-*  
 5 *eral banking agency (as defined in section 3 of the Federal*  
 6 *Deposit Insurance Act) under any Federal banking law, in-*  
 7 *cluding section 8 of the Federal Deposit Insurance Act.*

8 (c) *HART–SCOTT–RODINO AMENDMENTS.*—

9 (1) *BANKS.*—*Section 7A(c)(7) of the Clayton Act*  
 10 *(15 U.S.C. 18a(c)(7)) is amended by inserting before*  
 11 *the semicolon at the end the following: “, except that*  
 12 *a portion of a transaction is not exempt under this*  
 13 *paragraph if such portion of the transaction (A) is*  
 14 *subject to section 6 of the Bank Holding Company*  
 15 *Act of 1956; and (B) does not require agency ap-*  
 16 *proval under section 3 of the Bank Holding Company*  
 17 *Act of 1956”.*

18 (2) *BANK HOLDING COMPANIES.*—*Section*  
 19 *7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)) is*  
 20 *amended by inserting before the semicolon at the end*  
 21 *the following: “, except that a portion of a transaction*  
 22 *is not exempt under this paragraph if such portion*  
 23 *of the transaction (A) is subject to section 6 of the*  
 24 *Bank Holding Company Act of 1956; and (B) does*

1       *not require agency approval under section 4 of the*  
 2       *Bank Holding Company Act of 1956”.*

3   **SEC. 144. ANNUAL GAO REPORT.**

4       *(a) IN GENERAL.—By the end of the 1-year period be-*  
 5       *ginning on the date of the enactment of this Act and annu-*  
 6       *ally thereafter, the Comptroller General of the United States*  
 7       *shall submit a report to the Congress on market concentra-*  
 8       *tion in the financial services industry and its impact on*  
 9       *consumers.*

10       *(b) ANALYSIS.—Each report submitted under sub-*  
 11       *section (a) shall contain an analysis of—*

12               *(1) the positive and negative effects of affiliations*  
 13       *between various types of financial companies, and of*  
 14       *acquisitions pursuant to this Act and the amend-*  
 15       *ments made by this Act to other provisions of law, in-*  
 16       *cluding any positive or negative effects on consumers,*  
 17       *area markets, and submarkets thereof or on registered*  
 18       *securities brokers and dealers which have been pur-*  
 19       *chased by depository institutions or depository insti-*  
 20       *tution holding companies;*

21               *(2) the changes in business practices and the ef-*  
 22       *fects of any such changes on the availability of ven-*  
 23       *ture capital, consumer credit, and other financial*  
 24       *services or products and the availability of capital*  
 25       *and credit for small businesses; and*

1           (3) the acquisition patterns among depository  
 2           institutions, depository institution holding compa-  
 3           nies, securities firms, and insurance companies in-  
 4           cluding acquisitions among the largest 20 percent of  
 5           firms and acquisitions within regions or other limited  
 6           geographical areas.

7           (c) *SUNSET*.—This section shall not apply after the  
 8           end of the 5-year period beginning on the date of the enact-  
 9           ment of this Act.

## 10           ***Subtitle F—National Treatment***

### 11           ***SEC. 151. FOREIGN BANKS THAT ARE FINANCIAL HOLDING*** 12           ***COMPANIES.***

13           Section 8(c) of the International Banking Act of 1978  
 14           (12 U.S.C. 3106(c)) is amended by adding at the end the  
 15           following new paragraph:

16                   “(3)    *TERMINATION    OF    GRANDFATHERED*  
 17           *RIGHTS.*—

18                           “(A) *IN GENERAL.*—If any foreign bank or  
 19                           foreign company files a declaration under section  
 20                           6(b)(1)(D) or receives a determination under sec-  
 21                           tion 10(d)(1) of the Bank Holding Company Act  
 22                           of 1956, any authority conferred by this sub-  
 23                           section on any foreign bank or company to en-  
 24                           gage in any activity which the Board has deter-  
 25                           mined to be permissible for financial holding

1        *companies under section 6 of such Act shall ter-*  
2        *minate immediately.*

3                “(B) *RESTRICTIONS AND REQUIREMENTS*  
4        *AUTHORIZED.—If a foreign bank or company*  
5        *that engages, directly or through an affiliate*  
6        *pursuant to paragraph (1), in an activity which*  
7        *the Board has determined to be permissible for*  
8        *financial holding companies under section 6 of*  
9        *the Bank Holding Company Act of 1956 has not*  
10       *filed a declaration with the Board of its status*  
11       *as a financial holding company under such sec-*  
12       *tion or received a determination under section*  
13       *10(d)(1) by the end of the 2-year period begin-*  
14       *ning on the date of the enactment of the Finan-*  
15       *cial Services Act of 1999, the Board, giving due*  
16       *regard to the principle of national treatment and*  
17       *equality of competitive opportunity, may impose*  
18       *such restrictions and requirements on the con-*  
19       *duct of such activities by such foreign bank or*  
20       *company as are comparable to those imposed on*  
21       *a financial holding company organized under*  
22       *the laws of the United States, including a re-*  
23       *quirement to conduct such activities in compli-*  
24       *ance with any prudential safeguards established*



1           *under section 114 of the Financial Services*  
 2           *Act.”.*

3   **SEC. 152. FOREIGN BANKS AND FOREIGN FINANCIAL INSTI-**  
 4                   **TUTIONS THAT ARE WHOLESALE FINANCIAL**  
 5                   **INSTITUTIONS.**

6           *Section 8A of the Federal Deposit Insurance Act (as*  
 7   *added by section 136(c)(2) of this Act) is amended by add-*  
 8   *ing at the end the following new subsection:*

9           “(i) *VOLUNTARY TERMINATION OF DEPOSIT INSUR-*  
 10   *ANCE.—The provisions on voluntary termination of insur-*  
 11   *ance in this section shall apply to an insured branch of*  
 12   *a foreign bank (including a Federal branch) in the same*  
 13   *manner and to the same extent as they apply to an insured*  
 14   *State bank or a national bank.”.*

15   **SEC. 153. REPRESENTATIVE OFFICES.**

16           (a) *DEFINITION OF “REPRESENTATIVE OFFICE”.—*  
 17   *Section 1(b)(15) of the International Banking Act of 1978*  
 18   *(12 U.S.C. 3101(15)) is amended by striking “State agency,*  
 19   *or subsidiary of a foreign bank” and inserting “or State*  
 20   *agency”.*

21           (b) *EXAMINATIONS.—Section 10(c) of the Inter-*  
 22   *national Banking Act of 1978 (12 U.S.C. 3107(c)) is*  
 23   *amended by adding at the end the following: “The Board*  
 24   *may also make examinations of any affiliate of a foreign*  
 25   *bank conducting business in any State if the Board deems*

1 *it necessary to determine and enforce compliance with this*  
 2 *Act, the Bank Holding Company Act of 1956 (12 U.S.C.*  
 3 *1841 et seq.), or other applicable Federal banking law.”.*

4 **SEC. 154. RECIPROCITY.**

5 (a) *NATIONAL TREATMENT REPORTS.*—

6 (1) *REPORT REQUIRED IN THE EVENT OF CER-*  
 7 *TAIN ACQUISITIONS.*—

8 (A) *IN GENERAL.*—*Whenever a person from*  
 9 *a foreign country announces its intention to ac-*  
 10 *quire or acquires a bank, a securities under-*  
 11 *writer, broker, or dealer, an investment adviser,*  
 12 *or insurance company that ranks within the top*  
 13 *50 firms in that line of business in the United*  
 14 *States, the Secretary of Commerce, in the case of*  
 15 *an insurance company, or the Secretary of the*  
 16 *Treasury, in the case of a bank, a securities un-*  
 17 *derwriter, broker, or dealer, or an investment ad-*  
 18 *viser, shall, within the earlier of 6 months of*  
 19 *such announcement or such acquisition and in*  
 20 *consultation with other appropriate Federal and*  
 21 *State agencies, prepare and submit to the Con-*  
 22 *gress a report on whether a United States person*  
 23 *would be able, de facto or de jure, to acquire an*  
 24 *equivalent sized firm in the country in which*  
 25 *such person from a foreign country is located.*

1                   (B) ANALYSIS AND RECOMMENDATIONS.—If  
 2                   a report submitted under subparagraph (A)  
 3                   states that the equivalent treatment referred to in  
 4                   such subparagraph, *de facto* and *de jure*, is not  
 5                   provided in the country which is the subject of  
 6                   the report, the Secretary of Commerce or the Sec-  
 7                   retary of the Treasury, as the case may be and  
 8                   in consultation with other appropriate Federal  
 9                   and State agencies, shall include in the report  
 10                  analysis and recommendations as to how that  
 11                  country's laws and regulations would need to be  
 12                  changed so that reciprocal treatment would exist.

13               (2) REPORT REQUIRED BEFORE FINANCIAL  
 14               SERVICES NEGOTIATIONS COMMENCE.—The Secretary  
 15               of Commerce, with respect to insurance companies,  
 16               and the Secretary of the Treasury, with respect to  
 17               banks, securities underwriters, brokers, dealers, and  
 18               investment advisers, shall, not less than 6 months be-  
 19               fore the commencement of the financial services nego-  
 20               tiations of the World Trade Organization and in con-  
 21               sultation with other appropriate Federal and State  
 22               agencies, prepare and submit to the Congress a report  
 23               containing—

24                       (A) an assessment of the 30 largest finan-  
 25                       cial services markets with regard to whether re-

1        *reciprocal access is available in such markets to*  
 2        *United States financial services providers; and*

3                *(B) with respect to any such financial serv-*  
 4        *ices markets in which reciprocal access is not*  
 5        *available to United States financial services pro-*  
 6        *viders, an analysis and recommendations as to*  
 7        *what legislative, regulatory, or enforcement*  
 8        *changes would be required to ensure full reci-*  
 9        *procity for such providers.*

10        *(3) PERSON OF A FOREIGN COUNTRY DEFINED.—*

11        *For purposes of this subsection, the term “person of*  
 12        *a foreign country” means a person, or a person which*  
 13        *directly or indirectly owns or controls that person,*  
 14        *that is a resident of that country, is organized under*  
 15        *the laws of that country, or has its principal place of*  
 16        *business in that country.*

17        *(b) PROVISIONS APPLICABLE TO SUBMISSIONS.—*

18                *(1) NOTICE.—Before preparing any report re-*  
 19        *quired under subsection (a), the Secretary of Com-*  
 20        *merce or the Secretary of the Treasury, as the case*  
 21        *may be, shall publish notice that a report is in prepa-*  
 22        *ration and seek comment from United States persons.*

23                *(2) PRIVILEGED SUBMISSIONS.—Upon the re-*  
 24        *quest of the submitting person, any comments or re-*  
 25        *lated communications received by the Secretary of*

1        *Commerce or the Secretary of the Treasury, as the*  
 2        *case may be, with regard to the report shall, for the*  
 3        *purposes of section 552 of title 5, of the United States*  
 4        *Code, be treated as commercial information obtained*  
 5        *from a person that is privileged or confidential, re-*  
 6        *gardless of the medium in which the information is*  
 7        *obtained. This confidential information shall be the*  
 8        *property of the Secretary and shall be privileged from*  
 9        *disclosure to any other person. However, this privilege*  
 10       *shall not be construed as preventing access to that*  
 11       *confidential information by the Congress.*

12            (3) *PROHIBITION OF UNAUTHORIZED DISCLO-*  
 13        *SURES.—No person in possession of confidential in-*  
 14        *formation, provided under this section may disclose*  
 15        *that information, in whole or in part, except for dis-*  
 16        *closure made in published statistical material that*  
 17        *does not disclose, either directly or when used in con-*  
 18        *junction with publicly available information, the con-*  
 19        *fidential information of any person.*

20        ***Subtitle G—Federal Home Loan***  
 21        ***Bank System Modernization***

22        ***SEC. 161. SHORT TITLE.***

23        *This subtitle may be cited as the “Federal Home Loan*  
 24        *Bank System Modernization Act of 1999”.*

1 **SEC. 162. DEFINITIONS.**

2       *Section 2 of the Federal Home Loan Bank Act (12*  
 3 *U.S.C. 1422) is amended—*

4               *(1) in paragraph (1), by striking “term ‘Board’*  
 5 *means” and inserting “terms ‘Finance Board’ and*  
 6 *‘Board’ mean”;*

7               *(2) by striking paragraph (3) and inserting the*  
 8 *following:*

9               *“(3) STATE.—The term ‘State’, in addition to*  
 10 *the States of the United States, includes the District*  
 11 *of Columbia, Guam, Puerto Rico, the United States*  
 12 *Virgin Islands, American Samoa, and the Common-*  
 13 *wealth of the Northern Mariana Islands.”; and*

14               *(3) by adding at the end the following new para-*  
 15 *graph:*

16               *“(13) COMMUNITY FINANCIAL INSTITUTION.—*

17               *“(A) IN GENERAL.—The term ‘community*  
 18 *financial institution’ means a member—*

19                       *“(i) the deposits of which are insured*  
 20 *under the Federal Deposit Insurance Act;*  
 21 *and*

22                       *“(ii) that has, as of the date of the*  
 23 *transaction at issue, less than \$500,000,000*  
 24 *in average total assets, based on an average*  
 25 *of total assets over the 3 years preceding*  
 26 *that date.*

1                   “(B) *ADJUSTMENTS.*—The \$500,000,000  
 2                   *limit referred to in subparagraph (A)(ii) shall be*  
 3                   *adjusted annually by the Finance Board, based*  
 4                   *on the annual percentage increase, if any, in the*  
 5                   *Consumer Price Index for all urban consumers,*  
 6                   *as published by the Department of Labor.”.*

7 **SEC. 163. SAVINGS ASSOCIATION MEMBERSHIP.**

8                   *Section 5(f) of the Home Owners’ Loan Act (12 U.S.C.*  
 9                   *1464(f)) is amended to read as follows:*

10                   “(f) *FEDERAL HOME LOAN BANK MEMBERSHIP.*—On  
 11                   *and after January 1, 1999, a Federal savings association*  
 12                   *may become a member of the Federal Home Loan Bank*  
 13                   *System, and shall qualify for such membership in the man-*  
 14                   *ner provided by the Federal Home Loan Bank Act.”.*

15 **SEC. 164. ADVANCES TO MEMBERS; COLLATERAL.**

16                   (a) *IN GENERAL.*—Section 10(a) of the Federal Home  
 17                   *Loan Bank Act (12 U.S.C. 1430(a)) is amended—*

18                   (1) *by redesignating paragraphs (1) through (4)*  
 19                   *as subparagraphs (A) through (D), respectively, and*  
 20                   *indenting appropriately;*

21                   (2) *by striking “(a) Each” and inserting the fol-*  
 22                   *lowing:*

23                   “(a) *IN GENERAL.*—

24                   “(1) *ALL ADVANCES.*—*Each*”;

1           (3) by striking the second sentence and inserting  
2           the following:

3           “(2) *PURPOSES OF ADVANCES.*—A long-term ad-  
4           vance may only be made for the purposes of—

5           “(A) providing funds to any member for  
6           residential housing finance; and

7           “(B) providing funds to any community fi-  
8           nancial institution for small business, agricul-  
9           tural, rural development, or low-income commu-  
10          nity development lending.”;

11          (4) by striking “A Bank” and inserting the fol-  
12          lowing:

13          “(3) *COLLATERAL.*—A Bank”;

14          (5) in paragraph (3) (as so designated by para-  
15          graph (4) of this subsection)—

16          (A) in subparagraph (C) (as so redesignated  
17          by paragraph (1) of this subsection) by striking  
18          “Deposits” and inserting “Cash or deposits”;

19          (B) in subparagraph (D) (as so redesign-  
20          ated by paragraph (1) of this subsection), by  
21          striking the second sentence; and

22          (C) by inserting after subparagraph (D) (as  
23          so redesignated by paragraph (1) of this sub-  
24          section) the following new subparagraph:



1           “(E) Secured loans for small business, agri-  
 2           culture, rural development, or low-income com-  
 3           munity development, or securities representing a  
 4           whole interest in such secured loans, in the case  
 5           of any community financial institution.”;

6           (6) in paragraph (5)—

7           (A) in the second sentence, by striking “and  
 8           the Board”;

9           (B) in the third sentence, by striking  
 10          “Board” and inserting “Federal home loan  
 11          bank”; and

12          (C) by striking “(5) Paragraphs (1) through  
 13          (4)” and inserting the following:

14          “(4) *ADDITIONAL BANK AUTHORITY.*—Subpara-  
 15          graphs (A) through (E) of paragraph (3)”; and

16          (7) by adding at the end the following:

17          “(5) *REVIEW OF CERTAIN COLLATERAL STAND-*  
 18          *ARDS.*—The Board may review the collateral stand-  
 19          ards applicable to each Federal home loan bank for  
 20          the classes of collateral described in subparagraphs  
 21          (D) and (E) of paragraph (3), and may, if necessary  
 22          for safety and soundness purposes, require an increase  
 23          in the collateral standards for any or all of those  
 24          classes of collateral.

1           “(6) *DEFINITIONS.*—For purposes of this sub-  
 2           section, the terms ‘small business’, ‘agriculture’, ‘rural  
 3           development’, and ‘low-income community develop-  
 4           ment’ shall have the meanings given those terms by  
 5           rule or regulation of the Finance Board.”.

6           (b) *CLERICAL AMENDMENT.*—The section heading for  
 7           section 10 of the Federal Home Loan Bank Act (12 U.S.C.  
 8           1430) is amended to read as follows:

9           **“SEC. 10. ADVANCES TO MEMBERS.”.**

10          (c) *CONFORMING AMENDMENTS RELATING TO MEM-*  
 11          *BERS WHICH ARE NOT QUALIFIED THRIFT LENDERS*—The  
 12          first of the 2 subsections designated as subsection (e) of sec-  
 13          tion 10 of the Federal Home Loan Bank Act (12 U.S.C.  
 14          1430(e)(1)) is amended—

15               (1) in the last sentence of paragraph (1), by in-  
 16               serting “or, in the case of any community financial  
 17               institution, for the purposes described in subsection  
 18               (a)(2)” before the period; and

19               (2) in paragraph (5)(C), by inserting “except  
 20               that, in determining the actual thrift investment per-  
 21               centage of any community financial institution for  
 22               purposes of this subsection, the total investment of  
 23               such member in loans for small business, agriculture,  
 24               rural development, or low-income community develop-  
 25               ment, or securities representing a whole interest in

1        *such loans, shall be treated as a qualified thrift in-*  
 2        *vestment (as defined in such section 10(m))” before*  
 3        *the period.*

4    **SEC. 165. ELIGIBILITY CRITERIA.**

5        *Section 4(a) of the Federal Home Loan Bank Act (12*  
 6    *U.S.C. 1424(a)) is amended—*

7            *(1) in paragraph (2)(A), by inserting, “(other*  
 8        *than a community financial institution)” after “in-*  
 9        *stitution”; and*

10          *(2) by adding at the end the following new para-*  
 11        *graph:*

12            *“(3) LIMITED EXEMPTION FOR COMMUNITY FI-*  
 13        *NANCIAL INSTITUTIONS.—A community financial in-*  
 14        *stitution that otherwise meets the requirements of*  
 15        *paragraph (2) may become a member without regard*  
 16        *to the percentage of its total assets that is represented*  
 17        *by residential mortgage loans, as described in sub-*  
 18        *paragraph (A) of paragraph (2).”.*

19    **SEC. 166. MANAGEMENT OF BANKS.**

20        *(a) BOARD OF DIRECTORS.—Section 7(d) of the Fed-*  
 21        *eral Home Loan Bank Act (12 U.S.C. 1427(d)) is*  
 22        *amended—*

23            *(1) by striking “(d) The term” and inserting the*  
 24        *following:*

25        *“(d) TERMS OF OFFICE.—The term”; and*

1           (2) *by striking “shall be two years”.*

2           (b) *COMPENSATION.*—Section 7(i) of the Federal Home  
3 *Loan Bank Act (12 U.S.C. 1427(i)) is amended by striking*  
4 *“, subject to the approval of the board”.*

5           (c) *REPEAL OF SECTIONS 22A AND 27.*—The Federal  
6 *Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended*  
7 *by striking sections 22A (12 U.S.C. 1442a) and 27 (12*  
8 *U.S.C. 1447).*

9           (d) *SECTION 12.*—Section 12 of the Federal Home  
10 *Loan Bank Act (12 U.S.C. 1432) is amended—*

11           (1) *in subsection (a)—*

12                   (A) *by striking “, but, except” and all that*  
13 *follows through “ten years”;*

14                   (B) *by striking “subject to the approval of*  
15 *the Board” the first place that term appears;*

16                   (C) *by striking “and, by its Board of direc-*  
17 *tors,” and all that follows through “agent of such*  
18 *bank,” and inserting “and, by the board of direc-*  
19 *tors of the bank, to prescribe, amend, and repeal*  
20 *by-laws governing the manner in which its af-*  
21 *fairs may be administered, consistent with ap-*  
22 *plicable laws and regulations, as administered*  
23 *by the Finance Board. No officer, employee, at-*  
24 *torney, or agent of a Federal home loan bank”;*  
25 *and*

1           (D) by striking “Board of directors” where  
 2           such term appears in the penultimate sentence  
 3           and inserting “board of directors”; and  
 4           (2) in subsection (b), by striking “loans banks”  
 5           and inserting “loan banks”.

6           (e) *POWERS AND DUTIES OF FEDERAL HOUSING FI-*  
 7 *NANCE BOARD.*—

8           (1) *ISSUANCE OF NOTICES OF VIOLATIONS.*—*Sec-*  
 9 *tion 2B(a) of the Federal Home Loan Bank Act (12*  
 10 *U.S.C. 1422b(a)) is amended by adding at the end the*  
 11 *following new paragraphs:*

12           “(5) To issue and serve a notice of charges upon  
 13           a Federal home loan bank or upon any executive offi-  
 14           cer or director of a Federal home loan bank if, in the  
 15           determination of the Finance Board, the bank, execu-  
 16           tive officer, or director is engaging or has engaged in,  
 17           or the Finance Board has reasonable cause to believe  
 18           that the bank, executive officer, or director is about to  
 19           engage in, any conduct that violates any provision of  
 20           this Act or any law, order, rule, or regulation or any  
 21           condition imposed in writing by the Finance Board  
 22           in connection with the granting of any application or  
 23           other request by the bank, or any written agreement  
 24           entered into by the bank with the agency, in accord-  
 25           ance with the procedures provided in section 1371(c)

1       *of the Federal Housing Enterprises Financial Safety*  
2       *and Soundness Act of 1992. Such authority includes*  
3       *the same authority to take affirmative action to cor-*  
4       *rect conditions resulting from violations or practices*  
5       *or to limit activities of a bank or any executive officer*  
6       *or director of a bank as appropriate Federal banking*  
7       *agencies have to take with respect to insured deposi-*  
8       *tory institutions under paragraphs (6) and (7) of sec-*  
9       *tion 8(b) of the Federal Deposit Insurance Act, and*  
10      *to have all other powers, rights, and duties to enforce*  
11      *this Act with respect to the Federal home loan banks*  
12      *and their executive officers and directors as the Office*  
13      *of Federal Housing Enterprise Oversight has to en-*  
14      *force the Federal Housing Enterprises Financial*  
15      *Safety and Soundness Act of 1992, the Federal Na-*  
16      *tional Mortgage Association Charter Act, or the Fed-*  
17      *eral Home Loan Mortgage Corporation Act with re-*  
18      *spect to the Federal housing enterprises under the*  
19      *Federal Housing Enterprises Financial Safety and*  
20      *Soundness Act of 1992.*

21           “(6) *To address any insufficiencies in capital*  
22      *levels resulting from the application of section 5(f) of*  
23      *the Home Owners’ Loan Act.*

24           “(7) *To sue and be sued, by and through its own*  
25      *attorneys.”.*

(2) *TECHNICAL AMENDMENT.*—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking “Federal Home Loan Bank Board,” and inserting “Director of the Office of Thrift Supervision, “the Federal Housing Finance Board,”.

(f) *ELIGIBILITY TO SECURE ADVANCES.*—

(1) *SECTION 9.*—Section 9 of the Federal Home Loan Bank Act (12 U.S.C. 1429) is amended—

(A) in the second sentence, by striking “with the approval of the Board”; and

(B) in the third sentence, by striking “, subject to the approval of the Board,”.

(2) *SECTION 10.*—Section 10 of the Federal Home Loan Bank Act (12 U.S.C. 1430) is amended—

(A) in subsection (c)—

(i) in the first sentence, by striking “Board” and inserting “Federal home loan bank”; and

(ii) by striking the second sentence;

(B) in subsection (d)—

(i) in the first sentence, by striking “and the approval of the Board”; and

(ii) by striking “Subject to the approval of the Board, any” and inserting “Any”; and

1                   (C) in subsection (j)(1)—

2                   (i) by striking “to subsidize the interest  
3                   rate on advances” and inserting “to provide  
4                   subsidies, including subsidized interest rates  
5                   on advances”;

6                   (ii) by striking “Pursuant” and insert-  
7                   ing the following:

8                   “(A) *ESTABLISHMENT.—Pursuant*”; and

9                   (iii) by adding at the end the following  
10                  new subparagraph:

11                  “(B) *NONDELEGATION OF APPROVAL AU-*  
12                  *THORITY.—Subject to such regulations as the Fi-*  
13                  *nance Board may prescribe, the board of direc-*  
14                  *tors of each Federal home loan bank may ap-*  
15                  *prove or disapprove requests from members for*  
16                  *Affordable Housing Program subsidies, and may*  
17                  *not delegate such authority.*”.

18                  (g) *SECTION 16.—Section 16(a) of the Federal Home*  
19                  *Loan Bank Act (12 U.S.C. 1436(a)) is amended—*

20                  (1) *in the third sentence—*

21                  (A) by striking “net earnings” and insert-  
22                  ing “previously retained earnings or current net  
23                  earnings”; and



1                   (B) by striking “, and then only with the  
2                   approval of the Federal Housing Finance  
3                   Board”; and

4                   (2) by striking the fourth sentence.

5           (h) SECTION 18.—Section 18(b) of the Federal Home  
6   Loan Bank Act (12 U.S.C. 1438(b)) is amended by striking  
7   paragraph (4).

8   **SEC. 167. RESOLUTION FUNDING CORPORATION.**

9           (a) IN GENERAL.—Section 21B(f)(2)(C) of the Federal  
10   Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is amend-  
11   ed to read as follows:

12                   “(C) PAYMENTS BY FEDERAL HOME LOAN  
13                   BANKS.—

14                   “(i) IN GENERAL.—To the extent that  
15                   the amounts available pursuant to subpara-  
16                   graphs (A) and (B) are insufficient to cover  
17                   the amount of interest payments, each Fed-  
18                   eral home loan bank shall pay to the Fund-  
19                   ing Corporation in each calendar year,  
20                   20.75 percent of the net earnings of that  
21                   bank (after deducting expenses relating to  
22                   section 10(j) and operating expenses).

23                   “(ii) ANNUAL DETERMINATION.—The  
24                   Board annually shall determine the extent  
25                   to which the value of the aggregate amounts

1        *paid by the Federal home loan banks ex-*  
2        *ceeds or falls short of the value of an annu-*  
3        *ity of \$300,000,000 per year that com-*  
4        *mences on the issuance date and ends on the*  
5        *final scheduled maturity date of the obliga-*  
6        *tions, and shall select appropriate present*  
7        *value factors for making such determina-*  
8        *tions.*

9                *“(iii) PAYMENT TERM ALTERATIONS.—*  
10        *The Board shall extend or shorten the term*  
11        *of the payment obligations of a Federal*  
12        *home loan bank under this subparagraph as*  
13        *necessary to ensure that the value of all*  
14        *payments made by the banks is equivalent*  
15        *to the value of an annuity referred to in*  
16        *clause (ii).*

17                *“(iv) TERM BEYOND MATURITY.—If the*  
18        *Board extends the term of payments beyond*  
19        *the final scheduled maturity date for the ob-*  
20        *ligations, each Federal home loan bank shall*  
21        *continue to pay 20.75 percent of its net*  
22        *earnings (after deducting expenses relating*  
23        *to section 10(j) and operating expenses) to*  
24        *the Treasury of the United States until the*  
25        *value of all such payments by the Federal*

19 SEC. 168. CAPITAL STRUCTURE OF FEDERAL HOME LOAN  
20 BANKS.

23 "SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN  
24 BANKS.

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1           “(1) *CAPITAL STANDARDS.*—Not later than 1  
 2           year after the date of the enactment of the *Financial*  
 3           *Services Act of 1999*, the *Finance Board* shall issue  
 4           regulations prescribing uniform capital standards ap-  
 5           plicable to each *Federal home loan bank*, which shall  
 6           require each such bank to meet—

7                   “(A) the leverage requirement specified in  
 8                   paragraph (2); and

9                   “(B) the risk-based capital requirements, in  
 10                  accordance with paragraph (3).

11           “(2) *LEVERAGE REQUIREMENT.*—

12                   “(A) *IN GENERAL.*—The leverage require-  
 13                  ment shall require each *Federal home loan bank*  
 14                  to maintain a minimum amount of total capital  
 15                  based on the aggregate on-balance sheet assets of  
 16                  the bank and shall be 5 percent.

17                   “(B) *TREATMENT OF STOCK AND RETAINED*  
 18                  *EARNINGS.*—In determining compliance with the  
 19                  minimum leverage ratio established under sub-  
 20                  paragraph (A), the paid-in value of the out-  
 21                  standing *Class B* stock shall be multiplied by  
 22                  1.5, the paid-in value of the outstanding *Class C*  
 23                  stock and the amount of retained earnings shall  
 24                  be multiplied by 2.0, and such higher amounts

1       *shall be deemed to be capital for purposes of*  
 2       *meeting the 5 percent minimum leverage ratio.*

3       “(3) *RISK-BASED CAPITAL STANDARDS.*—

4               “(A) *IN GENERAL.*—*Each Federal home*  
 5       *loan bank shall maintain permanent capital in*  
 6       *an amount that is sufficient, as determined in*  
 7       *accordance with the regulations of the Finance*  
 8       *Board, to meet—*

9                       “(i) *the credit risk to which the Fed-*  
 10       *eral home loan bank is subject; and*

11                      “(ii) *the market risk, including inter-*  
 12       *est rate risk, to which the Federal home*  
 13       *loan bank is subject, based on a stress test*  
 14       *established by the Finance Board that rigor-*  
 15       *ously tests for changes in market variables,*  
 16       *including changes in interest rates, rate vol-*  
 17       *atility, and changes in the shape of the*  
 18       *yield curve.*

19               “(B) *CONSIDERATION OF OTHER RISK-*  
 20       *BASED STANDARDS.*—*In establishing the risk-*  
 21       *based standard under subparagraph (A)(ii), the*  
 22       *Finance Board shall take due consideration of*  
 23       *any risk-based capital test established pursuant*  
 24       *to section 1361 of the Federal Housing Enter-*  
 25       *prises Financial Safety and Soundness Act of*

1       1992 (12 U.S.C. 4611) for the enterprises (as de-  
 2       fined in that Act), with such modifications as  
 3       the Finance Board determines to be appropriate  
 4       to reflect differences in operations between the  
 5       Federal home loan banks and those enterprises.

6       “(4) *OTHER REGULATORY REQUIREMENTS.*—The  
 7       regulations issued by the Finance Board under para-  
 8       graph (1) shall—

9               “(A) permit each Federal home loan bank to  
 10       issue, with such rights, terms, and preferences,  
 11       not inconsistent with this Act and the regula-  
 12       tions issued hereunder, as the board of directors  
 13       of that bank may approve, any one or more of—

14               “(i) Class A stock, which shall be re-  
 15       deemable in cash and at par 6 months fol-  
 16       lowing submission by a member of a writ-  
 17       ten notice of its intent to redeem such  
 18       shares;

19               “(ii) Class B stock, which shall be re-  
 20       deemable in cash and at par 5 years fol-  
 21       lowing submission by a member of a writ-  
 22       ten notice of its intent to redeem such  
 23       shares; and

24               “(iii) Class C stock, which shall be  
 25       nonredeemable;

1           “(B) provide that the stock of a Federal  
 2           home loan bank may be issued to and held by  
 3           only members of the bank, and that a bank may  
 4           not issue any stock other than as provided in  
 5           this section;

6           “(C) prescribe the manner in which stock of  
 7           a Federal home loan bank may be sold, trans-  
 8           ferred, redeemed, or repurchased; and

9           “(D) provide the manner of disposition of  
 10          outstanding stock held by, and the liquidation of  
 11          any claims of the Federal home loan bank  
 12          against, an institution that ceases to be a mem-  
 13          ber of the bank, through merger or otherwise, or  
 14          that provides notice of intention to withdraw  
 15          from membership in the bank.

16          “(5) DEFINITIONS OF CAPITAL.—For purposes of  
 17          determining compliance with the capital standards  
 18          established under this subsection—

19               “(A) permanent capital of a Federal home  
 20               loan bank shall include (as determined in ac-  
 21               cordance with generally accepted accounting  
 22               principles)—

23                       “(i) the amounts paid for the Class C  
 24                       stock and any other nonredeemable stock  
 25                       approved by the Finance Board;

1           “(ii) the amounts paid for the Class B  
2           stock, in an amount not to exceed 1 percent  
3           of the total assets of the bank; and

4           “(iii) the retained earnings of the  
5           bank; and

6           “(B) total capital of a Federal home loan  
7           bank shall include—

8           “(i) permanent capital;

9           “(ii) the amounts paid for the Class A  
10          stock, Class B stock (excluding any amount  
11          treated as permanent capital under sub-  
12          paragraph (5)(A)(ii)), or any other class of  
13          redeemable stock approved by the Finance  
14          Board;

15          “(iii) consistent with generally accept-  
16          ed accounting principles, and subject to the  
17          regulation of the Finance Board, a general  
18          allowance for losses, which may not include  
19          any reserves or allowances made or held  
20          against specific assets; and

21          “(iv) any other amounts from sources  
22          available to absorb losses incurred by the  
23          bank that the Finance Board determines by  
24          regulation to be appropriate to include in  
25          determining total capital.



1           “(6) *TRANSITION PERIOD.*—Notwithstanding any  
 2           other provisions of this Act, the requirements relating  
 3           to purchase and retention of capital stock of a Federal  
 4           home loan bank by any member thereof in effect on  
 5           the day before the date of the enactment of the Federal  
 6           Home Loan Bank System Modernization Act of 1999,  
 7           shall continue in effect with respect to each Federal  
 8           home loan bank until the regulations required by this  
 9           subsection have taken effect and the capital structure  
 10          plan required by subsection (b) has been approved by  
 11          the Finance Board and implemented by such bank.

12          “(b) *CAPITAL STRUCTURE PLAN.*—

13               “(1) *APPROVAL OF PLANS.*—Not later than 270  
 14               days after the date of publication by the Finance  
 15               Board of final regulations in accordance with sub-  
 16               section (a), the board of directors of each Federal  
 17               home loan bank shall submit for Finance Board ap-  
 18               proval a plan establishing and implementing a cap-  
 19               ital structure for such bank that—

20                       “(A) the board of directors determines is  
 21                       best suited for the condition and operation of the  
 22                       bank and the interests of the members of the  
 23                       bank;

24                       “(B) meets the requirements of subsection  
 25                       (c); and

1           “(C) *meets the minimum capital standards*  
 2           *and requirements established under subsection*  
 3           *(a) and other regulations prescribed by the Fi-*  
 4           *nance Board.*

5           “(2) *APPROVAL OF MODIFICATIONS.—The board*  
 6           *of directors of a Federal home loan bank shall submit*  
 7           *to the Finance Board for approval any modifications*  
 8           *that the bank proposes to make to an approved cap-*  
 9           *ital structure plan.*

10          “(c) *CONTENTS OF PLAN.—The capital structure plan*  
 11          *of each Federal home loan bank shall contain provisions*  
 12          *addressing each of the following:*

13               “(1) *MINIMUM INVESTMENT.—*

14               “(A) *IN GENERAL.—Each capital structure*  
 15               *plan of a Federal home loan bank shall require*  
 16               *each member of the bank to maintain a min-*  
 17               *imum investment in the stock of the bank, the*  
 18               *amount of which shall be determined in a man-*  
 19               *ner to be prescribed by the board of directors of*  
 20               *each bank and to be included as part of the plan.*

21               “(B) *INVESTMENT ALTERNATIVES.—*

22               “(i) *IN GENERAL.—In establishing the*  
 23               *minimum investment required for each*  
 24               *member under subparagraph (A), a Federal*  
 25               *home loan bank may, in its discretion, in-*

1           *clude any one or more of the requirements*  
 2           *referred to in clause (ii), or any other pro-*  
 3           *visions approved by the Finance Board.*

4           “(ii) *AUTHORIZED REQUIREMENTS.—*  
 5           *A requirement is referred to in this clause*  
 6           *if it is a requirement for—*

7                     “(I) *a stock purchase based on a*  
 8                     *percentage of the total assets of a mem-*  
 9                     *ber; or*

10                    “(II) *a stock purchase based on a*  
 11                    *percentage of the outstanding advances*  
 12                    *from the bank to the member.*

13           “(C) *MINIMUM AMOUNT.—Each capital*  
 14           *structure plan of a Federal home loan bank shall*  
 15           *require that the minimum stock investment es-*  
 16           *tablished for members shall be set at a level that*  
 17           *is sufficient for the bank to meet the minimum*  
 18           *capital requirements established by the Finance*  
 19           *Board under subsection (a).*

20           “(D) *ADJUSTMENTS TO MINIMUM REQUIRED*  
 21           *INVESTMENT.—The capital structure plan of*  
 22           *each Federal home loan bank shall impose a con-*  
 23           *tinuing obligation on the board of directors of*  
 24           *the bank to review and adjust the minimum in-*  
 25           *vestment required of each member of that bank,*

1       *as necessary to ensure that the bank remains in*  
 2       *compliance with applicable minimum capital*  
 3       *levels established by the Finance Board, and*  
 4       *shall require each member to comply promptly*  
 5       *with any adjustments to the required minimum*  
 6       *investment.*

7       “(2) *TRANSITION RULE.—*

8               “(A) *IN GENERAL.—The capital structure*  
 9       *plan of each Federal home loan bank shall speci-*  
 10       *fy the date on which it shall take effect, and may*  
 11       *provide for a transition period of not longer*  
 12       *than 3 years to allow the bank to come into com-*  
 13       *pliance with the capital requirements prescribed*  
 14       *under subsection (a), and to allow any institu-*  
 15       *tion that was a member of the bank on the date*  
 16       *of the enactment of the Financial Services Act of*  
 17       *1999, to come into compliance with the min-*  
 18       *imum investment required pursuant to the plan.*

19              “(B)   *INTERIM PURCHASE REQUIRE-*  
 20       *MENTS.—The capital structure plan of a Federal*  
 21       *home loan bank may allow any member referred*  
 22       *to in subparagraph (A) that would be required*  
 23       *by the terms of the capital structure plan to in-*  
 24       *crease its investment in the stock of the bank to*

1           *do so in periodic installments during the transi-*  
 2           *tion period.*

3           “(3) *DISPOSITION OF SHARES.*—*The capital*  
 4           *structure plan of a Federal home loan bank shall pro-*  
 5           *vide for the manner of disposition of any stock held*  
 6           *by a member of that bank that terminates its mem-*  
 7           *bership or that provides notice of its intention to*  
 8           *withdraw from membership in that bank.*

9           “(4) *CLASSES OF STOCK.*—

10           “(A) *IN GENERAL.*—*The capital structure*  
 11           *plan of a Federal home loan bank shall afford*  
 12           *each member of that bank the option of main-*  
 13           *taining its required investment in the bank*  
 14           *through the purchase of any combination of*  
 15           *classes of stock authorized by the board of direc-*  
 16           *tors of the bank and approved by the Finance*  
 17           *Board in accordance with its regulations.*

18           “(B) *RIGHTS REQUIREMENT.*—*A Federal*  
 19           *home loan bank shall include in its capital*  
 20           *structure plan provisions establishing terms,*  
 21           *rights, and preferences, including minimum in-*  
 22           *vestment, dividends, voting, and liquidation*  
 23           *preferences of each class of stock issued by the*  
 24           *bank, consistent with Finance Board regulations*  
 25           *and market requirements.*

1           “(C) *REDUCED MINIMUM INVESTMENT.*—  
 2           *The capital structure plan of a Federal home*  
 3           *loan bank may provide for a reduced minimum*  
 4           *stock investment for any member of that bank*  
 5           *that elects to purchase Class B, Class C, or any*  
 6           *other class of nonredeemable stock, in a manner*  
 7           *that is consistent with meeting the minimum*  
 8           *capital requirements of the bank, as established*  
 9           *by the Finance Board.*

10           “(D) *LIQUIDATION OF CLAIMS.*—*The capital*  
 11           *structure plan of a Federal home loan bank shall*  
 12           *provide for the liquidation in an orderly man-*  
 13           *ner, as determined by the bank, of any claim of*  
 14           *that bank against a member, including claims*  
 15           *for any applicable prepayment fees or penalties*  
 16           *resulting from prepayment of advances prior to*  
 17           *stated maturity.*

18           “(5) *LIMITED TRANSFERABILITY OF STOCK.*—  
 19           *The capital structure plan of a Federal home loan*  
 20           *bank shall—*

21           “(A) *provide that—*

22                   “(i) *any stock issued by that bank*  
 23                   *shall be available only to, held only by, and*  
 24                   *tradable only among members of that bank*

1                   *and between that bank and its members;*  
2                   *and*

3                   “(ii) *a bank has no obligation to re-*  
4                   *purchase its outstanding Class C stock but*  
5                   *may do so, provided it is consistent with*  
6                   *Finance Board regulations and is at a price*  
7                   *that is mutually agreeable to the bank and*  
8                   *the member; and*

9                   “(B) *establish standards, criteria, and re-*  
10                  *quirements for the issuance, purchase, transfer,*  
11                  *retirement, and redemption of stock issued by*  
12                  *that bank.*

13                  “(6) *BANK REVIEW OF PLAN.—Before filing a*  
14                  *capital structure plan with the Finance Board, each*  
15                  *Federal home loan bank shall conduct a review of the*  
16                  *plan by—*

17                  “(A) *an independent certified public ac-*  
18                  *countant, to ensure, to the extent possible, that*  
19                  *implementation of the plan would not result in*  
20                  *any write-down of the redeemable bank stock in-*  
21                  *vestment of its members; and*

22                  “(B) *at least one major credit rating agen-*  
23                  *cy, to determine, to the extent possible, whether*  
24                  *implementation of the plan would have any ma-*  
25                  *terial effect on the credit ratings of the bank.*

1       “(d) *TERMINATION OF MEMBERSHIP.*—

2               “(1) *VOLUNTARY WITHDRAWAL.*—*Any member*  
 3       *may withdraw from a Federal home loan bank by*  
 4       *providing written notice to the bank of its intent to*  
 5       *do so. The applicable stock redemption notice periods*  
 6       *shall commence upon receipt of the notice by the*  
 7       *bank. Upon the expiration of the applicable notice pe-*  
 8       *riod for each class of redeemable stock, the member*  
 9       *may surrender such stock to the bank, and shall be*  
 10       *entitled to receive in cash the par value of the stock.*  
 11       *During the applicable notice periods, the member*  
 12       *shall be entitled to dividends and other membership*  
 13       *rights commensurate with continuing stock owner-*  
 14       *ship.*

15              “(2) *INVOLUNTARY WITHDRAWAL.*—

16                      “(A) *IN GENERAL.*—*The board of directors*  
 17       *of a Federal home loan bank may terminate the*  
 18       *membership of any institution if, subject to Fi-*  
 19       *nance Board regulations, it determines that—*

20                              “(i) *the member has failed to comply*  
 21                              *with a provision of this Act or any regula-*  
 22                              *tion prescribed under this Act; or*

23                              “(ii) *the member has been determined*  
 24                              *to be insolvent, or otherwise subject to the*  
 25                              *appointment of a conservator, receiver, or*



1            *other legal custodian, by a State or Federal*  
 2            *authority with regulatory and supervisory*  
 3            *responsibility for the member.*

4            “(B) *STOCK DISPOSITION.*—*An institution,*  
 5            *the membership of which is terminated in ac-*  
 6            *cordance with subparagraph (A)—*

7            *“(i) shall surrender redeemable stock to*  
 8            *the Federal home loan bank, and shall re-*  
 9            *ceive in cash the par value of the stock,*  
 10           *upon the expiration of the applicable notice*  
 11           *period under subsection (a)(4)(A);*

12           *“(ii) shall receive any dividends de-*  
 13           *clared on its redeemable stock, during the*  
 14           *applicable notice period under subsection*  
 15           *(a)(4)(A); and*

16           *“(iii) shall not be entitled to any other*  
 17           *rights or privileges accorded to members*  
 18           *after the date of the termination.*

19           “(C) *COMMENCEMENT OF NOTICE PE-*  
 20           *RIOD.*—*With respect to an institution, the mem-*  
 21           *bership of which is terminated in accordance*  
 22           *with subparagraph (A), the applicable notice pe-*  
 23           *riod under subsection (a)(4) for each class of re-*  
 24           *deemable stock shall commence on the earlier*  
 25           *of—*

1                   “(i) the date of such termination; or

2                   “(ii) the date on which the member has  
3                   provided notice of its intent to redeem such  
4                   stock.

5                   “(3) *LIQUIDATION OF INDEBTEDNESS.*—Upon  
6                   the termination of the membership of an institution  
7                   for any reason, the outstanding indebtedness of the  
8                   member to the bank shall be liquidated in an orderly  
9                   manner, as determined by the bank and, upon the ex-  
10                  tinguishment of all such indebtedness, the bank shall  
11                  return to the member all collateral pledged to secure  
12                  the indebtedness.

13                  “(e) *REDEMPTION OF EXCESS STOCK.*—

14                  “(1) *IN GENERAL.*—A Federal home loan bank,  
15                  in its sole discretion, may redeem or repurchase, as  
16                  appropriate, any shares of Class A or Class B stock  
17                  issued by the bank and held by a member that are in  
18                  excess of the minimum stock investment required of  
19                  that member.

20                  “(2) *EXCESS STOCK.*—Shares of stock held by a  
21                  member shall not be deemed to be ‘excess stock’ for  
22                  purposes of this subsection by virtue of a member’s  
23                  submission of a notice of intent to withdraw from  
24                  membership or termination of its membership in any  
25                  other manner.

1           “(3) *PRIORITY.*—A Federal home loan bank may  
 2           not redeem any excess Class B stock prior to the end  
 3           of the 5-year notice period, unless the member has no  
 4           Class A stock outstanding that could be redeemed as  
 5           excess.

6           “(f) *IMPAIRMENT OF CAPITAL.*—If the Finance Board  
 7           or the board of directors of a Federal home loan bank deter-  
 8           mines that the bank has incurred or is likely to incur losses  
 9           that result in or are expected to result in charges against  
 10          the capital of the bank, the bank shall not redeem or repur-  
 11          chase any stock of the bank without the prior approval of  
 12          the Finance Board while such charges are continuing or  
 13          are expected to continue. In no case may a bank redeem  
 14          or repurchase any applicable capital stock if, following the  
 15          redemption, the bank would fail to satisfy any minimum  
 16          capital requirement.

17          “(g) *REJOINING AFTER DIVESTITURE OF ALL*  
 18          *SHARES.*—

19               “(1) *IN GENERAL.*—Except as provided in para-  
 20          graph (2), and notwithstanding any other provision  
 21          of this Act, an institution that divests all shares of  
 22          stock in a Federal home loan bank may not, after  
 23          such divestiture, acquire shares of any Federal home  
 24          loan bank before the end of the 5-year period begin-  
 25          ning on the date of the completion of such divestiture,

1        *unless the divestiture is a consequence of a transfer of*  
 2        *membership on an uninterrupted basis between banks.*

3                “(2) *EXCEPTION FOR WITHDRAWALS FROM MEM-*  
 4        *BERSHIP BEFORE 1998.—Any institution that with-*  
 5        *drew from membership in any Federal home loan*  
 6        *bank before December 31, 1997, may acquire shares of*  
 7        *a Federal home loan bank at any time after that date,*  
 8        *subject to the approval of the Finance Board and the*  
 9        *requirements of this Act.*

10              “(h) *TREATMENT OF RETAINED EARNINGS.—*

11              “(1) *IN GENERAL.—The holders of the Class C*  
 12        *stock of a Federal home loan bank, and any other*  
 13        *classes of nonredeemable stock approved by the Fi-*  
 14        *nance Board (to the extent provided in the terms*  
 15        *thereof), shall own the retained earnings, surplus, un-*  
 16        *divided profits, and equity reserves, if any, of the*  
 17        *bank.*

18              “(2) *NO NONREDEEMABLE CLASSES OF STOCK.—*  
 19        *If a Federal home loan bank has no outstanding Class*  
 20        *C or other such nonredeemable stock, then the holders*  
 21        *of any other classes of stock of the bank then out-*  
 22        *standing shall have ownership in, and a private*  
 23        *property right in, the retained earnings, surplus, un-*  
 24        *divided profits, and equity reserves, if any, of the*  
 25        *bank.*

1           “(3) *EXCEPTION.*—*Except as specifically pro-*  
 2           *vided in this section or through the declaration of a*  
 3           *dividend or a capital distribution by a Federal home*  
 4           *loan bank, or in the event of liquidation of the bank,*  
 5           *a member shall have no right to withdraw or other-*  
 6           *wise receive distribution of any portion of the re-*  
 7           *tained earnings of the bank.*

8           “(4) *LIMITATION.*—*A Federal home loan bank*  
 9           *may not make any distribution of its retained earn-*  
 10          *ings unless, following such distribution, the bank*  
 11          *would continue to meet all applicable capital require-*  
 12          *ments.’’.*

### 13           ***Subtitle H—ATM Fee Reform***

#### 14   ***SEC. 171. SHORT TITLE.***

15          *This subtitle may be cited as the “ATM Fee Reform*  
 16          *Act of 1999”.*

#### 17   ***SEC. 172. ELECTRONIC FUND TRANSFER FEE DISCLOSURES***

##### 18                   ***AT ANY HOST ATM.***

19          *Section 904(d) of the Electronic Fund Transfer Act (15*  
 20          *U.S.C. 1693b(d)) is amended by adding at the end the fol-*  
 21          *lowing new paragraph:*

22                   “(3) *FEE DISCLOSURES AT AUTOMATED TELLER*  
 23                   *MACHINES.*—

24                   “(A) *IN GENERAL.*—*The regulations pre-*  
 25                   *scribed under paragraph (1) shall require any*

1        *automated teller machine operator who imposes*  
 2        *a fee on any consumer for providing host trans-*  
 3        *fer services to such consumer to provide notice in*  
 4        *accordance with subparagraph (B) to the con-*  
 5        *sumer (at the time the service is provided) of—*

6                *“(i) the fact that a fee is imposed by*  
 7                *such operator for providing the service; and*

8                *“(ii) the amount of any such fee.*

9                *“(B) NOTICE REQUIREMENTS.—*

10                *“(i) ON THE MACHINE.—The notice re-*  
 11                *quired under clause (i) of subparagraph (A)*  
 12                *with respect to any fee described in such*  
 13                *subparagraph shall be posted in a promi-*  
 14                *nent and conspicuous location on or at the*  
 15                *automated teller machine at which the elec-*  
 16                *tronic fund transfer is initiated by the con-*  
 17                *sumer; and*

18                *“(ii) ON THE SCREEN.—The notice re-*  
 19                *quired under clauses (i) and (ii) of sub-*  
 20                *paragraph (A) with respect to any fee de-*  
 21                *scribed in such subparagraph shall appear*  
 22                *on the screen of the automated teller ma-*  
 23                *chine, or on a paper notice issued from such*  
 24                *machine, after the transaction is initiated*

1                   *and before the consumer is irrevocably com-*  
 2                   *mitted to completing the transaction.*

3                   “(C) *PROHIBITION ON FEES NOT PROPERLY*  
 4                   *DISCLOSED AND EXPLICITLY ASSUMED BY CON-*  
 5                   *SUMER.—No fee may be imposed by any auto-*  
 6                   *mated teller machine operator in connection*  
 7                   *with any electronic fund transfer initiated by a*  
 8                   *consumer for which a notice is required under*  
 9                   *subparagraph (A), unless—*

10                   “(i) *the consumer receives such notice*  
 11                   *in accordance with subparagraph (B); and*

12                   “(ii) *the consumer elects to continue in*  
 13                   *the manner necessary to effect the trans-*  
 14                   *action after receiving such notice.*

15                   “(D) *DEFINITIONS.—For purposes of this*  
 16                   *paragraph, the following definitions shall apply:*

17                   “(i) *ELECTRONIC FUND TRANSFER.—*  
 18                   *The term ‘electronic fund transfer’ includes*  
 19                   *a transaction which involves a balance in-*  
 20                   *quiry initiated by a consumer in the same*  
 21                   *manner as an electronic fund transfer,*  
 22                   *whether or not the consumer initiates a*  
 23                   *transfer of funds in the course of the trans-*  
 24                   *action.*

1                   “(ii) *AUTOMATED TELLER MACHINE*  
 2                   *OPERATOR.*—*The term ‘automated teller*  
 3                   *machine operator’ means any person who—*

4                   *“(I) operates an automated teller*  
 5                   *machine at which consumers initiate*  
 6                   *electronic fund transfers; and*

7                   *“(II) is not the financial institu-*  
 8                   *tion which holds the account of such*  
 9                   *consumer from which the transfer is*  
 10                  *made.*

11                  “(iii) *HOST TRANSFER SERVICES.*—  
 12                  *The term ‘host transfer services’ means any*  
 13                  *electronic fund transfer made by an auto-*  
 14                  *mated teller machine operator in connection*  
 15                  *with a transaction initiated by a consumer*  
 16                  *at an automated teller machine operated by*  
 17                  *such operator.”.*

18 **SEC. 173. DISCLOSURE OF POSSIBLE FEES TO CONSUMERS**

19 **WHEN ATM CARD IS ISSUED.**

20                  *Section 905(a) of the Electronic Fund Transfer Act (15*  
 21 *U.S.C. 1693c(a)) is amended—*

22                  *(1) by striking “and” at the end of paragraph*  
 23                  *(8);*

24                  *(2) by striking the period at the end of para-*  
 25                  *graph (9) and inserting “; and”; and*



1           (3) by inserting after paragraph (9) the fol-  
 2       lowing new paragraph:

3           “(10) a notice to the consumer that a fee may be  
 4       imposed by—

5           “(A) an automated teller machine operator  
 6       (as defined in section 904(d)(3)(D)(ii)) if the  
 7       consumer initiates a transfer from an automated  
 8       teller machine which is not operated by the per-  
 9       son issuing the card or other means of access;  
 10      and

11          “(B) any national, regional, or local net-  
 12      work utilized to effect the transaction.”.

13   **SEC. 174. FEASIBILITY STUDY.**

14      (a) *IN GENERAL.*—The Comptroller General of the  
 15   United States shall conduct a study of the feasibility of re-  
 16   quiring, in connection with any electronic fund transfer  
 17   initiated by a consumer through the use of an automated  
 18   teller machine—

19          (1) a notice to be provided to the consumer before  
 20      the consumer is irrevocably committed to completing  
 21      the transaction, which clearly states the amount of  
 22      any fee which will be imposed upon the consumma-  
 23      tion of the transaction by—

24          (A) any automated teller machine operator  
 25      (as defined in section 904(d)(3)(D)(ii)) of the

1           *Electronic Fund Transfer Act*) involved in the  
2           transaction;

3                   (B) the financial institution holding the ac-  
4           count of the consumer;

5                   (C) any national, regional, or local network  
6           utilized to effect the transaction; and

7                   (D) any other party involved in the trans-  
8           fer; and

9           (2) the consumer to elect to consummate the  
10          transaction after receiving the notice described in  
11          paragraph (1).

12          (b) *FACTORS TO BE CONSIDERED.*—In conducting the  
13          study required under subsection (a) with regard to the no-  
14          tice requirement described in such subsection, the Comp-  
15          troller General shall consider the following factors:

16                   (1) *The availability of appropriate technology.*

17                   (2) *Implementation and operating costs.*

18                   (3) *The competitive impact any such notice re-*  
19          *quirement would have on various sizes and types of*  
20          *institutions, if implemented.*

21                   (4) *The period of time which would be reasonable*  
22          *for implementing any such notice requirement.*

23                   (5) *The extent to which consumers would benefit*  
24          *from any such notice requirement.*

1           (6) *Any other factor the Comptroller General de-*  
 2           *termines to be appropriate in analyzing the feasi-*  
 3           *bility of imposing any such notice requirement.*

4           (c) *REPORT TO THE CONGRESS.—Before the end of the*  
 5           *6-month period beginning on the date of the enactment of*  
 6           *this Act, the Comptroller General shall submit a report to*  
 7           *the Congress containing—*

8                   (1) *the findings and conclusions of the Comp-*  
 9                   *troller General in connection with the study required*  
 10                  *under subsection (a); and*

11                   (2) *the recommendation of the Comptroller Gen-*  
 12                   *eral with regard to the question of whether a notice*  
 13                   *requirement described in subsection (a) should be im-*  
 14                   *plemented and, if so, how such requirement should be*  
 15                   *implemented.*

16 **SEC. 175. NO LIABILITY IF POSTED NOTICES ARE DAMAGED.**

17           *Section 910 of the Electronic Fund Transfer Act (15*  
 18           *U.S.C 1693h) is amended by adding at the end the following*  
 19           *new subsection:*

20           “(d) *EXCEPTION FOR DAMAGED NOTICES.—If the no-*  
 21           *tice required to be posted pursuant to section*  
 22           *904(d)(3)(B)(i) by an automated teller machine operator*  
 23           *has been posted by such operator in compliance with such*  
 24           *section and the notice is subsequently removed, damaged,*  
 25           *or altered by any person other than the operator of the auto-*

1 mated teller machine, the operator shall have no liability  
 2 under this section for failure to comply with section  
 3 904(d)(3)(B)(i).”.

4       ***Subtitle I—Direct Activities of***  
 5                   ***Banks***

6 ***SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-***  
 7                   ***WRITE CERTAIN MUNICIPAL BONDS.***

8       *The paragraph designated the Seventh of section 5136*  
 9 *of the Revised Statutes of the United States (12 U.S.C.*  
 10 *24(7)) is amended by adding at the end the following new*  
 11 *sentence: “In addition to the provisions in this paragraph*  
 12 *for dealing in, underwriting or purchasing securities, the*  
 13 *limitations and restrictions contained in this paragraph as*  
 14 *to dealing in, underwriting, and purchasing investment se-*  
 15 *curities for the national bank’s own account shall not apply*  
 16 *to obligations (including limited obligation bonds, revenue*  
 17 *bonds, and obligations that satisfy the requirements of sec-*  
 18 *tion 142(b)(1) of the Internal Revenue Code of 1986) issued*  
 19 *by or on behalf of any State or political subdivision of a*  
 20 *State, including any municipal corporate instrumentality*  
 21 *of one or more States, or any public agency or authority*  
 22 *of any State or political subdivision of a State, if the na-*  
 23 *tional bank is well capitalized (as defined in section 38 of*  
 24 *the Federal Deposit Insurance Act).”.*

***Subtitle J—Deposit Insurance  
Funds***

**SEC. 186. STUDY OF SAFETY AND SOUNDNESS OF FUNDS.**

(a) *STUDY REQUIRED.*—The Board of Directors of the Federal Deposit Insurance Corporation shall conduct a study of the following issues with regard to the Bank Insurance Fund and the Savings Association Insurance Fund:

(1) *SAFETY AND SOUNDNESS.*—The safety and soundness of the funds and the adequacy of the reserve requirements applicable to the funds in light of—

(A) the size of the insured depository institutions which are resulting from mergers and consolidations since the effective date of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

(B) the affiliation of insured depository institutions with other financial institutions pursuant to this Act and the amendments made by this Act.

(2) *CONCENTRATION LEVELS.*—The concentration levels of the funds, taking into account the number of members of each fund and the geographic distribution of such members, and the extent to which either fund is exposed to higher risks due to a regional

1       *concentration of members or an insufficient member-*  
 2       *ship base relative to the size of member institutions.*

3           (3) *MERGER ISSUES.*—*Issues relating to the*  
 4       *planned merger of the funds, including the cost of*  
 5       *merging the funds and the manner in which such*  
 6       *costs will be distributed among the members of the re-*  
 7       *spective funds.*

8       (b) *REPORT REQUIRED.*—

9           (1) *IN GENERAL.*—*Before the end of the 9-month*  
 10       *period beginning on the date of the enactment of this*  
 11       *Act, the Board of Directors of the Federal Deposit In-*  
 12       *surance Corporation shall submit a report to the Con-*  
 13       *gress on the study conducted pursuant to subsection*  
 14       *(a).*

15          (2) *CONTENTS OF REPORT.*—*The report shall*  
 16       *include—*

17               (A) *detailed findings of the Board of Direc-*  
 18       *tors with regard to the issues described in sub-*  
 19       *section (a);*

20               (B) *a description of the plans developed by*  
 21       *the Board of Directors for merging the Bank In-*  
 22       *surance Fund and the Savings Association In-*  
 23       *surance Fund, including an estimate of the*  
 24       *amount of the cost of such merger which would*

1           *be borne by Savings Association Insurance Fund*  
 2           *members; and*

3           *(C) such recommendations for legislative*  
 4           *and administrative action as the Board of Direc-*  
 5           *tors determines to be necessary or appropriate to*  
 6           *preserve the safety and soundness of the deposit*  
 7           *insurance funds, reduce the risks to such funds,*  
 8           *provide for an efficient merger of such funds,*  
 9           *and for other purposes.*

10       *(c) DEFINITIONS.—For purposes of this section, the fol-*  
 11       *lowing definitions shall apply:*

12           *(1) INSURED DEPOSITORY INSTITUTION.—The*  
 13           *term “insured depository institution” has the same*  
 14           *meaning as in section 3(c) of the Federal Deposit In-*  
 15           *surance Act.*

16           *(2) BIF AND SAIF MEMBERS.—The terms*  
 17           *“Bank Insurance Fund member” and “Savings Asso-*  
 18           *ciation Insurance Fund member” have the same*  
 19           *meanings as in section 7(l) of the Federal Deposit In-*  
 20           *surance Act.*

21       **SEC. 187. ELIMINATION OF SAIF AND DIF SPECIAL RE-**  
 22       **SERVES.**

23           *(a) SAIF SPECIAL RESERVES.—Section 11(a)(6) of*  
 24           *the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(6))*  
 25           *is amended by striking subparagraph (L).*

1       (b) *DIF SPECIAL RESERVES*.—Section 2704 of the De-  
 2       posit Insurance Funds Act of 1996 (12 U.S.C. 1821 note)  
 3       is amended—

4               (1) by striking subsection (b); and

5               (2) in subsection (d)—

6                       (A) by striking paragraph (4);

7                       (B) in paragraph (6)(C)(i), by striking “(6)  
 8                       and (7)” and inserting “(5), (6), and (7)”; and

9                       (C) in paragraph (6)(C), by striking clause  
 10                      (ii) and inserting the following:

11                               “(ii) by redesignating paragraph (8)  
 12                               as paragraph (5).”.

13                               ***Subtitle K—Miscellaneous***  
 14                               ***Provisions***

15       ***SEC. 191. TERMINATION OF “KNOW YOUR CUSTOMER” REG-***  
 16               ***ULATIONS.***

17       (a) *IN GENERAL*.—None of the proposed regulations  
 18       described in subsection (b) may be published in final form  
 19       and, to the extent any such regulation has become effective  
 20       before the date of the enactment of this Act, such regulation  
 21       shall cease to be effective as of such date.

22       (b) *PROPOSED REGULATIONS DESCRIBED*.—The pro-  
 23       posed regulations referred to in subsection (a) are as follows:

24               (1) The regulation proposed by the Comptroller  
 25       of the Currency to amend part 21 of title 12 of the



1       *Code of Federal Regulations, as published in the Fed-*  
 2       *eral Register on December 7, 1998.*

3           (2) *The regulation proposed by the Director of*  
 4       *the Office of Thrift Supervision to amend part 563 of*  
 5       *title 12 of the Code of Federal Regulations, as pub-*  
 6       *lished in the Federal Register on December 7, 1998.*

7           (3) *The regulation proposed by the Board of*  
 8       *Governors of the Federal Reserve System to amend*  
 9       *parts 208, 211, and 225 of title 12 of the Code of Fed-*  
 10       *eral Regulations, as published in the Federal Register*  
 11       *on December 7, 1998.*

12          (4) *The regulation proposed by the Federal De-*  
 13       *posit Insurance Corporation to amend part 326 of*  
 14       *title 12 of the Code of Federal Regulations, as pub-*  
 15       *lished in the Federal Register on December 7, 1998.*

16   **SEC. 192. STUDY AND REPORT ON FEDERAL ELECTRONIC**  
 17       **FUND TRANSFERS.**

18       (a) *STUDY.*—*The Secretary of the Treasury shall con-*  
 19       *duct a feasibility study to determine—*

20           (1) *whether all electronic payments issued by*  
 21       *Federal agencies could be routed through the Regional*  
 22       *Finance Centers of the Department of the Treasury*  
 23       *for verification and reconciliation;*

24           (2) *whether all electronic payments made by the*  
 25       *Federal Government could be subjected to the same*

1        *level of reconciliation as United States Treasury*  
2        *checks, including matching each payment issued with*  
3        *each corresponding deposit at financial institutions;*

4            (3) *whether the appropriate computer security*  
5        *controls are in place in order to ensure the integrity*  
6        *of electronic payments;*

7            (4) *the estimated costs of implementing, if so rec-*  
8        *ommended, the processes and controls described in*  
9        *paragraphs (1), (2), and (3); and*

10          (5) *a possible timetable for implementing those*  
11        *processes if so recommended.*

12        (b) *REPORT TO CONGRESS.*—*Not later than October*  
13        *1, 2000, the Secretary of the Treasury shall submit a report*  
14        *to Congress containing the results of the study required by*  
15        *subsection (a).*

16        (c) *DEFINITION.*—*For purposes of this section, the*  
17        *term “electronic payment” means any transfer of funds,*  
18        *other than a transaction originated by check, draft, or simi-*  
19        *lar paper instrument, which is initiated through an elec-*  
20        *tronic terminal, telephonic instrument, or computer or*  
21        *magnetic tapes so as to order, instruct, or authorize a debit*  
22        *or credit to a financial account.*

1 **SEC. 193. GENERAL ACCOUNTING OFFICE STUDY OF CON-**  
2 **FLICTS OF INTEREST**

3 (a) *STUDY REQUIRED.*—The Comptroller General of  
4 the United States shall conduct a study analyzing the con-  
5 flict of interest faced by the Board of Governors of the Fed-  
6 eral Reserve System between its role as a primary regulator  
7 of the banking industry and its role as a vendor of services  
8 to the banking and financial services industry.

9 (b) *SPECIFIC CONFLICT REQUIRED TO BE AD-*  
10 *DRESSED.*—In the course of the study required under sub-  
11 section (a), the Comptroller General shall address the con-  
12 flict of interest faced by the Board of Governors of the Fed-  
13 eral Reserve System between the role of the Board as a regu-  
14 lator of the payment system, generally, and its participa-  
15 tion in the payment system as a competitor with private  
16 entities who are providing payment services.

17 (c) *REPORT TO CONGRESS.*—Before the end of the 1-  
18 year period beginning on the date of the enactment of this  
19 Act, the Comptroller General shall submit a report to the  
20 Congress containing the findings and conclusions of the  
21 Comptroller General in connection with the study required  
22 under this section, together with such recommendations for  
23 such legislative or administrative actions as the Comp-  
24 troller General may determine to be appropriate, including  
25 recommendations for resolving any such conflict of interest.

1 **SEC. 194. STUDY OF COST OF ALL FEDERAL BANKING REGU-**  
2 **LATIONS.**

3       (a) *IN GENERAL.*—In accordance with the finding in  
4 the Board of Governors of the Federal Reserve System Staff  
5 Study Numbered 171 (April, 1998) that “Further research  
6 covering more and different types of regulations and regu-  
7 latory requirements is clearly needed to make informed de-  
8 cisions about regulations”, the Board of Governors of the  
9 Federal Reserve System, in consultation with the other Fed-  
10 eral banking agencies (as defined in section 3 of the Federal  
11 Deposit Insurance Act) shall conduct a comprehensive study  
12 of the total annual costs and benefits of all Federal finan-  
13 cial regulations and regulatory requirements applicable to  
14 banks.

15       (b) *REPORT REQUIRED.*—Before the end of the 2-year  
16 period beginning on the date of the enactment of this Act,  
17 the Board of Governors of the Federal Reserve System shall  
18 submit a comprehensive report to the Congress containing  
19 the findings and conclusions of the Board in connection  
20 with the study required under subsection (a) and such rec-  
21 ommendations for legislative and administrative action as  
22 the Board may determine to be appropriate.

1 **SEC. 195. STUDY AND REPORT ON ADAPTING EXISTING LEG-**  
 2 **ISLATIVE REQUIREMENTS TO ONLINE BANK-**  
 3 **ING AND LENDING.**

4 (a) *STUDY REQUIRED.*—*The Federal banking agencies*  
 5 *shall conduct a study of banking regulations regarding the*  
 6 *delivery of financial services, including those regulations*  
 7 *that may assume that there will be person-to-person contact*  
 8 *during the course of a financial services transaction, and*  
 9 *report their recommendations on adapting those existing re-*  
 10 *quirements to online banking and lending.*

11 (b) *REPORT REQUIRED.*—*Within 1 year of the date*  
 12 *of the enactment of this Act, the Federal banking agencies*  
 13 *shall submit a report to the Congress on the findings and*  
 14 *conclusions of the agencies with respect to the study re-*  
 15 *quired under subsection (a), together with such rec-*  
 16 *ommendations for legislative or regulatory action as the*  
 17 *agencies may determine to be appropriate.*

18 (c) *DEFINITION.*—*For purposes of this section, the*  
 19 *term “Federal banking agencies” means each Federal bank-*  
 20 *ing agency (as defined in section 3(z) of the Federal Deposit*  
 21 *Insurance Act).*

22 **SEC. 196. REGULATION OF UNINSURED STATE MEMBER**  
 23 **BANKS.**

24 *Section 9 of the Federal Reserve Act (12 U.S.C. 321*  
 25 *et seq.) is amended by adding at the end the following new*  
 26 *paragraph:*

15        *Section 18 of the Federal Deposit Insurance Act (21*  
16   *U.S.C. 1828) is amended by adding at the end the following*  
17   *new subsection:*

“(1) IN GENERAL.—Notwithstanding any other provision of law other than paragraph (2), no person shall have any claim for monetary damages or return of assets or other property against any Federal banking agency (including in its capacity as conservator or receiver) relating to the transfer of money, assets, or other property to increase the capital of an insured

1     *depository institution by any depository institution*  
 2     *holding company or controlling shareholder for such*  
 3     *depository institution, or any affiliate or subsidiary*  
 4     *of such depository institution, if at the time of the*  
 5     *transfer—*

6             “(A) *the insured depository institution is*  
 7             *subject to any direction issued in writing by a*  
 8             *Federal banking agency to increase its capital;*

9             “(B) *the depository institution is under-*  
 10            *capitalized, significantly undercapitalized, or*  
 11            *critically undercapitalized (as defined in section*  
 12            *38 of this Act); and*

13            “(C) *for that portion of the transfer that is*  
 14            *made by an entity covered by section 5(g) of the*  
 15            *Bank Holding Company Act of 1956 or section*  
 16            *45 of this Act, the Federal banking agency has*  
 17            *followed the procedure set forth in such section.*

18            “(2) *EXCEPTION.—No provision of this sub-*  
 19            *section shall be construed as limiting—*

20            “(A) *the right of an insured depository in-*  
 21            *stitution, a depository institution holding com-*  
 22            *pany, or any other agency or person to seek di-*  
 23            *rect review of an order or directive issued by a*  
 24            *Federal banking agency under this Act, the Bank*  
 25            *Holding Company Act of 1956, the National*

1           *Bank Receivership Act, the Bank Conservation*  
 2           *Act, or the Home Owners' Loan Act;*

3           “(B) *the rights of any party to a contract*  
 4           *pursuant to section 11(e) of this Act; or*

5           “(C) *the rights of any party to a contract*  
 6           *with a depository institution holding company*  
 7           *or a subsidiary of a depository institution hold-*  
 8           *ing company (other than an insured depository*  
 9           *institution).”.*

10 **SEC. 198. INTEREST RATES AND OTHER CHARGES AT**  
 11 **INTERSTATE BRANCHES.**

12           *Section 44 of the Federal Deposit Insurance Act (12*  
 13 *U.S.C. 1831u) is amended—*

14           *(1) by redesignating subsection (f) as subsection*  
 15           *(g); and*

16           *(2) by inserting after subsection (e) the following:*

17           “(f) *APPLICABLE RATE AND OTHER CHARGE LIMITA-*  
 18 *TIONS.—*

19           “(1) *IN GENERAL.—Except as provided for in*  
 20           *paragraph (3), upon the establishment of a branch of*  
 21           *any insured depository institution in a host State*  
 22           *under this section, the maximum interest rate or*  
 23           *amount of interest, discount points, finance charges,*  
 24           *or other similar charges that may be charged, taken,*  
 25           *received, or reserved from time to time in any loan*



1       or discount made or upon any note, bill of exchange,  
 2       financing transaction, or other evidence of debt by  
 3       any insured depository institution in such State shall  
 4       be equal to not more than the greater of—

5               “(A) the maximum interest rate or amount  
 6               of interest, discount points, finance charges, or  
 7               other similar charges that may be charged,  
 8               taken, received, or reserved in a similar trans-  
 9               action under the constitution, statutory, or other  
 10              laws of the home State of the insured depository  
 11              institution establishing any such branch, without  
 12              reference to this section, as such maximum inter-  
 13              est rate or amount of interest may change from  
 14              time to time; or

15              “(B) the maximum rate or amount of inter-  
 16              est, discount points, finance charges, or other  
 17              similar charges that may be charged, taken, re-  
 18              ceived, or reserved in a similar transaction by  
 19              an insured depository institution under the con-  
 20              stitution, statutory, or other laws of the host  
 21              State, without reference to this section.

22              “(2) *PREEMPTION.*—The limitations established  
 23              under paragraph (1) shall apply only in any State  
 24              that has a constitutional provision that sets a max-  
 25              imum lawful rate of interest on any contract at not

1        *more than 5 percent per annum above the Federal Re-*  
 2        *serve Discount Rate or 90-day commercial paper in*  
 3        *effect in the Federal Reserve Bank in the Federal Re-*  
 4        *serve District in which the State is located.*

5            “(3) *RULE OF CONSTRUCTION.*—No provision of  
 6        *this subsection shall be construed as superseding sec-*  
 7        *tion 501 of the Depository Institutions Deregulation*  
 8        *and Monetary Control Act of 1980.*

9        **SEC. 198A. INTERSTATE BRANCHES AND AGENCIES OF FOR-**  
 10        **IGN BANKS.**

11        *Section 5(a)(7) of the International Banking Act of*  
 12        *1978 (12 U.S.C. 3103(a)(7)), is amended to read as follows:*

13            “(7) *ADDITIONAL AUTHORITY FOR INTERSTATE*  
 14        *BRANCHES AND AGENCIES OF FOREIGN BANKS, UP-*  
 15        *GRADES OF CERTAIN FOREIGN BANK AGENCIES AND*  
 16        *BRANCHES.*—Notwithstanding paragraphs (1) and  
 17        (2), a foreign bank may—

18            “(A) *with the approval of the Board and*  
 19        *the Comptroller of the Currency, establish and*  
 20        *operate a Federal branch or Federal agency or,*  
 21        *with the approval of the Board and the appro-*  
 22        *priate State bank supervisor, a State branch or*  
 23        *State agency in any State outside the foreign*  
 24        *bank’s home State if—*

1           “(i) the establishment and operation of  
 2           such branch or agency is permitted by the  
 3           State in which the branch or agency is to  
 4           be established; and

5           “(ii) in the case of a Federal or State  
 6           branch, the branch receives only such depos-  
 7           its as would be permitted for a corporation  
 8           organized under section 25A of the Federal  
 9           Reserve Act (12 U.S.C. 611 et seq.); or

10          “(B) with the approval of the Board and  
 11          the relevant licensing authority (the Comptroller  
 12          in the case of a Federal branch or the appro-  
 13          priate State supervisor in the case of a State  
 14          branch), upgrade an agency, or a branch of the  
 15          type referred to in subparagraph (A)(ii), located  
 16          in a State outside the foreign bank’s home State,  
 17          into a Federal or State branch if—

18               “(i) the establishment and operation of  
 19               such branch is permitted by such State; and

20               “(ii) such agency or branch—

21                       “(I) was in operation in such  
 22                       State on the day before September 29,  
 23                       1994; or

24                       “(II) has been in operation in  
 25                       such State for a period of time that

1                    *meets the State's minimum age re-*  
2                    *quirement permitted under section*  
3                    *44(a)(5) of the Federal Deposit Insur-*  
4                    *ance Act."*

5    **SEC. 198B. FAIR TREATMENT OF WOMEN BY FINANCIAL AD-**  
6                    **VISERS.**

7            *(a) FINDINGS.—The Congress finds as follows:*

8                    *(1) Women's stature in society has risen consid-*  
9                    *erably, as they are now able to vote, own property,*  
10                   *and pursue independent careers, and are granted*  
11                   *equal protection under the law.*

12                   *(2) Women are at least as fiscally responsible as*  
13                   *men, and more than half of all women have sole re-*  
14                   *sponsibility for balancing the family checkbook and*  
15                   *paying the bills.*

16                   *(3) Estate planners, trust officers, investment ad-*  
17                   *visers, and other financial planners and advisers still*  
18                   *encourage the unjust and outdated practice of leaving*  
19                   *assets in trust for the category of wives and daugh-*  
20                   *ters, along with senile parents, minors, and mentally*  
21                   *incompetent children.*

22                   *(4) Estate planners, trust officers, investment ad-*  
23                   *visers, and other financial planners and advisers still*  
24                   *use sales themes and tactics detrimental to women by*  
25                   *stereotyping women as uncomfortable handling money*

1        *and needing protection from their own possible errors*  
 2        *of judgment and “fortune hunters”.*

3        *(b) SENSE OF THE CONGRESS.—It is the sense of the*  
 4        *Congress that estate planners, trust officers, investment ad-*  
 5        *visers, and other financial planners and advisers should—*

6                *(1) eliminate examples in their training mate-*  
 7        *rials which portray women as incapable and foolish;*  
 8        *and*

9                *(2) develop fairer and more balanced presen-*  
 10        *tations that eliminate outmoded and stereotypical ex-*  
 11        *amples which lead clients to take actions that are fi-*  
 12        *nancially detrimental to their wives and daughters.*

### 13        ***Subtitle L—Effective Date of Title***

#### 14        ***SEC. 199. EFFECTIVE DATE.***

15        *Except with regard to any subtitle or other provision*  
 16        *of this title for which a specific effective date is provided,*  
 17        *this title and the amendments made by this title shall take*  
 18        *effect at the end of the 180-day period beginning on the*  
 19        *date of the enactment of this Act.*

## 20                ***TITLE II—FUNCTIONAL*** 21                ***REGULATION***

### 22        ***Subtitle A—Brokers and Dealers***

#### 23        ***SEC. 201. DEFINITION OF BROKER.***

24        *Section 3(a)(4) of the Securities Exchange Act of 1934*  
 25        *(15 U.S.C. 78c(a)(4)) is amended to read as follows:*

1 “(4) *BROKER.*—

2 “(A) *IN GENERAL.*—*The term ‘broker’*  
 3 *means any person engaged in the business of ef-*  
 4 *fecting transactions in securities for the account*  
 5 *of others.*

6 “(B) *EXCEPTION FOR CERTAIN BANK AC-*  
 7 *TIVITIES.*—*A bank shall not be considered to be*  
 8 *a broker because the bank engages in any one or*  
 9 *more of the following activities under the condi-*  
 10 *tions described:*

11 “(i) *THIRD PARTY BROKERAGE AR-*  
 12 *RANGEMENTS.*—*The bank enters into a con-*  
 13 *tractual or other written arrangement with*  
 14 *a broker or dealer registered under this title*  
 15 *under which the broker or dealer offers bro-*  
 16 *kerage services on or off the premises of the*  
 17 *bank if—*

18 “(I) *such broker or dealer is clear-*  
 19 *ly identified as the person performing*  
 20 *the brokerage services;*

21 “(II) *the broker or dealer performs*  
 22 *brokerage services in an area that is*  
 23 *clearly marked and, to the extent prac-*  
 24 *ticable, physically separate from the*

1 *routine deposit-taking activities of the*  
2 *bank;*

3 *“(III) any materials used by the*  
4 *bank to advertise or promote generally*  
5 *the availability of brokerage services*  
6 *under the arrangement clearly indicate*  
7 *that the brokerage services are being*  
8 *provided by the broker or dealer and*  
9 *not by the bank;*

10 *“(IV) any materials used by the*  
11 *bank to advertise or promote generally*  
12 *the availability of brokerage services*  
13 *under the arrangement are in compli-*  
14 *ance with the Federal securities laws*  
15 *before distribution;*

16 *“(V) bank employees (other than*  
17 *associated persons of a broker or dealer*  
18 *who are qualified pursuant to the rules*  
19 *of a self-regulatory organization) per-*  
20 *form only clerical or ministerial func-*  
21 *tions in connection with brokerage*  
22 *transactions including scheduling ap-*  
23 *pointments with the associated persons*  
24 *of a broker or dealer, except that bank*  
25 *employees may forward customer funds*

1           or securities and may describe in gen-  
2           eral terms the types of investment vehi-  
3           cles available from the bank and the  
4           broker or dealer under the arrange-  
5           ment;

6           “(VI) bank employees do not re-  
7           ceive incentive compensation for any  
8           brokerage transaction unless such em-  
9           ployees are associated persons of a  
10          broker or dealer and are qualified pur-  
11          suant to the rules of a self-regulatory  
12          organization, except that the bank em-  
13          ployees may receive compensation for  
14          the referral of any customer if the com-  
15          pensation is a nominal one-time cash  
16          fee of a fixed dollar amount and the  
17          payment of the fee is not contingent on  
18          whether the referral results in a trans-  
19          action;

20          “(VII) such services are provided  
21          by the broker or dealer on a basis in  
22          which all customers which receive any  
23          services are fully disclosed to the broker  
24          or dealer;



1           “(VIII) the bank does not carry a  
2           securities account of the customer ex-  
3           cept as permitted under clause (ii) or  
4           (viii) of this subparagraph; and

5           “(IX) the bank, broker, or dealer  
6           informs each customer that the broker-  
7           age services are provided by the broker  
8           or dealer and not by the bank and that  
9           the securities are not deposits or other  
10          obligations of the bank, are not guar-  
11          anteed by the bank, and are not in-  
12          sured by the Federal Deposit Insurance  
13          Corporation.

14          “(ii) TRUST ACTIVITIES.—The bank ef-  
15          fects transactions in a trustee or fiduciary  
16          capacity in its trust department, or another  
17          department where the trust or fiduciary ac-  
18          tivity is regularly examined by bank exam-  
19          iners under the same standards and in the  
20          same way as such activities are examined  
21          in the trust department, and—

22          “(I) is chiefly compensated for  
23          such transactions, consistent with fidu-  
24          ciary principles and standards, on the  
25          basis of an administration or annual

1 *fee (payable on a monthly, quarterly,*  
 2 *or other basis), a percentage of assets*  
 3 *under management, or a flat or capped*  
 4 *per order processing fee equal to not*  
 5 *more than the cost incurred by the*  
 6 *bank in connection with executing se-*  
 7 *curities transactions for trustee and fi-*  
 8 *duciary customers, or any combination*  
 9 *of such fees; and*

10 *“(II) does not solicit brokerage*  
 11 *business, other than by advertising that*  
 12 *it effects transactions in securities in*  
 13 *conjunction with advertising its other*  
 14 *trust activities.*

15 *“(iii) PERMISSIBLE SECURITIES*  
 16 *TRANSACTIONS.—The bank effects trans-*  
 17 *actions in—*

18 *“(I) commercial paper, bankers*  
 19 *acceptances, or commercial bills;*

20 *“(II) exempted securities;*

21 *“(III) qualified Canadian govern-*  
 22 *ment obligations as defined in section*  
 23 *5136 of the Revised Statutes, in con-*  
 24 *formity with section 15C of this title*  
 25 *and the rules and regulations there-*

1           *under, or obligations of the North*  
 2           *American Development Bank; or*

3           “(IV) *any standardized, credit en-*  
 4           *hanced debt security issued by a for-*  
 5           *ign government pursuant to the*  
 6           *March 1989 plan of then Secretary of*  
 7           *the Treasury Brady, used by such for-*  
 8           *ign government to retire outstanding*  
 9           *commercial bank loans.*

10           “(iv)   CERTAIN   STOCK   PURCHASE  
 11           PLANS.—

12           “(I)       EMPLOYEE       BENEFIT  
 13           PLANS.—*The bank effects transactions,*  
 14           *as a registered transfer agent (includ-*  
 15           *ing as a registrar of stocks), in the se-*  
 16           *curities of an issuer as part of any*  
 17           *pension, retirement, profit-sharing,*  
 18           *bonus, thrift, savings, incentive, or*  
 19           *other similar benefit plan for the em-*  
 20           *ployees of that issuer or its affiliates*  
 21           *(as defined in section 2 of the Bank*  
 22           *Holding Company Act of 1956), if—*

23           “(aa) *the bank does not so-*  
 24           *licit transactions or provide in-*  
 25           *vestment advice with respect to*

1           *the purchase or sale of securities*  
2           *in connection with the plan; and*

3           “(bb) *the bank’s compensa-*  
4           *tion for such plan or program*  
5           *consists chiefly of administration*  
6           *fees, or flat or capped per order*  
7           *processing fees, or both.*

8           “(II) *DIVIDEND REINVESTMENT*  
9           *PLANS.—The bank effects transactions,*  
10          *as a registered transfer agent (includ-*  
11          *ing as a registrar of stocks), in the se-*  
12          *curities of an issuer as part of that*  
13          *issuer’s dividend reinvestment plan,*  
14          *if—*

15          “(aa) *the bank does not so-*  
16          *licit transactions or provide in-*  
17          *vestment advice with respect to*  
18          *the purchase or sale of securities*  
19          *in connection with the plan;*

20          “(bb) *the bank does not net*  
21          *shareholders’ buy and sell orders,*  
22          *other than for programs for odd-*  
23          *lot holders or plans registered*  
24          *with the Commission; and*

1                   “(cc) the bank’s compensa-  
2                   tion for such plan or program  
3                   consists chiefly of administration  
4                   fees, or flat or capped per order  
5                   processing fees, or both.

6                   “(III) ISSUER PLANS.—The bank  
7                   effects transactions, as a registered  
8                   transfer agent (including as a registrar  
9                   of stocks), in the securities of an issuer  
10                  as part of that issuer’s plan for the  
11                  purchase or sale of that issuer’s shares,  
12                  if—

13                  “(aa) the bank does not so-  
14                  licit transactions or provide in-  
15                  vestment advice with respect to  
16                  the purchase or sale of securities  
17                  in connection with the plan or  
18                  program;

19                  “(bb) the bank does not net  
20                  shareholders’ buy and sell orders,  
21                  other than for programs for odd-  
22                  lot holders or plans registered  
23                  with the Commission; and

24                  “(cc) the bank’s compensa-  
25                  tion for such plan or program

1                   *consists chiefly of administration*  
2                   *fees, or flat or capped per order*  
3                   *processing fees, or both.*

4                   “(IV) *PERMISSIBLE DELIVERY OF*  
5                   *MATERIALS.—The exception to being*  
6                   *considered a broker for a bank engaged*  
7                   *in activities described in subclauses*  
8                   *(I), (II), and (III) will not be affected*  
9                   *by a bank’s delivery of written or elec-*  
10                  *tronic plan materials to employees of*  
11                  *the issuer, shareholders of the issuer, or*  
12                  *members of affinity groups of the*  
13                  *issuer, so long as such materials are—*

14                    “(aa) *comparable in scope or*  
15                    *nature to that permitted by the*  
16                    *Commission as of the date of the*  
17                    *enactment of the Financial Serv-*  
18                    *ices Act of 1999; or*

19                    “(bb) *otherwise permitted by*  
20                    *the Commission.*

21                   “(v) *SWEEP ACCOUNTS.—The bank ef-*  
22                   *fects transactions as part of a program for*  
23                   *the investment or reinvestment of deposit*  
24                   *funds into any no-load, open-end manage-*  
25                   *ment investment company registered under*

1           *the Investment Company Act of 1940 that*  
 2           *holds itself out as a money market fund.*

3           “(vi) *AFFILIATE TRANSACTIONS.—The*  
 4           *bank effects transactions for the account of*  
 5           *any affiliate (as defined in section 2 of the*  
 6           *Bank Holding Company Act of 1956) of the*  
 7           *bank other than—*

8                     “(I) *a registered broker or dealer;*

9                     *or*

10                    “(II) *an affiliate that is engaged*  
 11                    *in merchant banking, as described in*  
 12                    *section 6(c)(3)(H) of the Bank Holding*  
 13                    *Company Act of 1956.*

14           “(vii) *PRIVATE SECURITIES OFFER-*  
 15           *INGS.—The bank—*

16                    “(I) *effects sales as part of a pri-*  
 17                    *mary offering of securities not involv-*  
 18                    *ing a public offering, pursuant to sec-*  
 19                    *tion 3(b), 4(2), or 4(6) of the Securities*  
 20                    *Act of 1933 or the rules and regula-*  
 21                    *tions issued thereunder;*

22                    “(II) *at any time after the date*  
 23                    *that is 1 year after the date of the en-*  
 24                    *actment of the Financial Services Act*  
 25                    *of 1999, is not affiliated with a broker*

1            *or dealer that has been registered for*  
 2            *more than 1 year in accordance with*  
 3            *this Act, and engages in dealing, mar-*  
 4            *ket making, or underwriting activities,*  
 5            *other than with respect to exempted se-*  
 6            *curities; and*

7            *“(III) effects transactions exclu-*  
 8            *sively with qualified investors.*

9            *“(viii) SAFEKEEPING AND CUSTODY*  
 10          *ACTIVITIES.—*

11           *“(I) IN GENERAL.—The bank, as*  
 12           *part of customary banking activities—*

13           *“(aa) provides safekeeping or*  
 14           *custody services with respect to se-*  
 15           *curities, including the exercise of*  
 16           *warrants and other rights on be-*  
 17           *half of customers;*

18           *“(bb) facilitates the transfer*  
 19           *of funds or securities, as a custo-*  
 20           *dian or a clearing agency, in con-*  
 21           *nection with the clearance and*  
 22           *settlement of its customers’ trans-*  
 23           *actions in securities;*

24           *“(cc) effects securities lending*  
 25           *or borrowing transactions with or*



1           *on behalf of customers as part of*  
2           *services provided to customers*  
3           *pursuant to division (aa) or (bb)*  
4           *or invests cash collateral pledged*  
5           *in connection with such trans-*  
6           *actions; or*

7                   *“(dd) holds securities pledged*  
8           *by a customer to another person*  
9           *or securities subject to purchase or*  
10          *resale agreements involving a cus-*  
11          *tomers, or facilitates the pledging*  
12          *or transfer of such securities by*  
13          *book entry or as otherwise pro-*  
14          *vided under applicable law, if the*  
15          *bank maintains records separately*  
16          *identifying the securities and the*  
17          *customer.*

18                   *“(II) EXCEPTION FOR CARRYING*  
19          *BROKER ACTIVITIES.—The exception to*  
20          *being considered a broker for a bank*  
21          *engaged in activities described in sub-*  
22          *clause (I) shall not apply if the bank,*  
23          *in connection with such activities, acts*  
24          *in the United States as a carrying*  
25          *broker (as such term, and different for-*

1                    *mulations thereof, are used in section*  
 2                    *15(c)(3) of this title and the rules and*  
 3                    *regulations thereunder) for any broker*  
 4                    *or dealer, unless such carrying broker*  
 5                    *activities are engaged in with respect*  
 6                    *to government securities (as defined in*  
 7                    *paragraph (42) of this subsection).*

8                    “(ix)    *EXCEPTED    BANKING    PROD-*  
 9                    *UCTS.—The bank effects transactions in ex-*  
 10                    *cepted banking products, as defined in sec-*  
 11                    *tion 206 of the Financial Services Act of*  
 12                    *1999.*

13                    “(x)    *MUNICIPAL    SECURITIES.—The*  
 14                    *bank effects transactions in municipal secu-*  
 15                    *rities.*

16                    “(xi)   *DE MINIMIS EXCEPTION.—The*  
 17                    *bank effects, other than in transactions re-*  
 18                    *ferred to in clauses (i) through (x), not more*  
 19                    *than 500 transactions in securities in any*  
 20                    *calendar year, and such transactions are*  
 21                    *not effected by an employee of the bank who*  
 22                    *is also an employee of a broker or dealer.*

23                    “(C)   *BROKER   DEALER   EXECUTION.—The*  
 24                    *exception to being considered a broker for a bank*  
 25                    *engaged in activities described in clauses (ii),*

(iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any security that is a publicly traded security in the United States, unless—

“(i) the bank directs such trade to a registered broker or dealer for execution;

“(ii) the trade is a cross trade or other substantially similar trade of a security that—

“(I) is made by the bank or between the bank and an affiliated fiduciary; and

“(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

“(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

“(D) *FIDUCIARY CAPACITY*.—For purposes of subparagraph (B)(ii), the term ‘fiduciary capacity’ means—

“(i) in the capacity as trustee, executor, administrator, registrar of stocks and

bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

“(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

“(iii) in any other similar capacity.

“(F) *EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).*—The term ‘broker’ does not include a bank that—

“(i) was, immediately prior to the enactment of the Financial Services Act of 1999, subject to section 15(e) of this title; and

“(ii) is subject to such restrictions and requirements as the Commission considers appropriate.”.

**SEC. 202. DEFINITION OF DEALER.**

Section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

“(5) *DEALER.*—

“(A) *IN GENERAL.*—The term ‘dealer’ means any person engaged in the business of

1        *buying and selling securities for such person's*  
 2        *own account through a broker or otherwise.*

3                “(B) *EXCEPTION FOR PERSON NOT EN-*  
 4        *GAGED IN THE BUSINESS OF DEALING.—The*  
 5        *term ‘dealer’ does not include a person that buys*  
 6        *or sells securities for such person's own account,*  
 7        *either individually or in a fiduciary capacity,*  
 8        *but not as a part of a regular business.*

9                “(C) *EXCEPTION FOR CERTAIN BANK AC-*  
 10        *TIVITIES.—A bank shall not be considered to be*  
 11        *a dealer because the bank engages in any of the*  
 12        *following activities under the conditions de-*  
 13        *scribed:*

14                “(i) *PERMISSIBLE SECURITIES TRANS-*  
 15        *ACTIONS.—The bank buys or sells—*

16                “(I) *commercial paper, bankers*  
 17        *acceptances, or commercial bills;*

18                “(II) *exempted securities;*

19                “(III) *qualified Canadian govern-*  
 20        *ment obligations as defined in section*  
 21        *5136 of the Revised Statutes of the*  
 22        *United States, in conformity with sec-*  
 23        *tion 15C of this title and the rules and*  
 24        *regulations thereunder, or obligations*

1                   *of the North American Development*  
 2                   *Bank; or*

3                   “(IV) *any standardized, credit en-*  
 4                   *hanced debt security issued by a for-*  
 5                   *ign government pursuant to the*  
 6                   *March 1989 plan of then Secretary of*  
 7                   *the Treasury Brady, used by such for-*  
 8                   *ign government to retire outstanding*  
 9                   *commercial bank loans.*

10                  “(ii) *INVESTMENT, TRUSTEE, AND FI-*  
 11                  *DUCIARY TRANSACTIONS.—The bank buys or*  
 12                  *sells securities for investment purposes—*

13                       “(I) *for the bank; or*

14                       “(II) *for accounts for which the*  
 15                       *bank acts as a trustee or fiduciary.*

16                  “(iii)       *ASSET-BACKED        TRANS-*  
 17                  *ACTIONS.—The bank engages in the issuance*  
 18                  *or sale to qualified investors, through a*  
 19                  *grantor trust or other separate entity, of se-*  
 20                  *curities backed by or representing an inter-*  
 21                  *est in notes, drafts, acceptances, loans,*  
 22                  *leases, receivables, other obligations (other*  
 23                  *than securities of which the bank is not the*  
 24                  *issuer), or pools of any such obligations pre-*  
 25                  *dominantly originated by—*

1                   “(I) *the bank;*

2                   “(II) *an affiliate of any such*  
3                   *bank other than a broker or dealer; or*

4                   “(III) *a syndicate of banks of*  
5                   *which the bank is a member, if the ob-*  
6                   *ligations or pool of obligations consists*  
7                   *of mortgage obligations or consumer-re-*  
8                   *lated receivables.*

9                   “(iv) *EXCEPTED BANKING PROD-*  
10                  *UCTS.—The bank buys or sells excepted*  
11                  *banking products, as defined in section 206*  
12                  *of the Financial Services Act of 1999.*

13                  “(v) *DERIVATIVE INSTRUMENTS.—The*  
14                  *bank issues, buys, or sells any derivative in-*  
15                  *strument to which the bank is a party—*

16                         “(I) *to or from a qualified inves-*  
17                         *tor, except that if the instrument pro-*  
18                         *vides for the delivery of one or more se-*  
19                         *curities (other than a derivative in-*  
20                         *strument or government security), the*  
21                         *transaction shall be effected with or*  
22                         *through a registered broker or dealer;*  
23                         *or*

24                         “(II) *to or from other persons, ex-*  
25                         *cept that if the derivative instrument*

1 provides for the delivery of one or more  
 2 securities (other than a derivative in-  
 3 strument or government security), or is  
 4 a security (other than a government se-  
 5 curity), the transaction shall be effected  
 6 with or through a registered broker or  
 7 dealer; or

8 “(III) to or from any person if the  
 9 instrument is neither a security nor  
 10 provides for the delivery of one or more  
 11 securities (other than a derivative in-  
 12 strument).”.

13 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**  
 14 **TIES OFFERINGS.**

15 Section 15A of the Securities Exchange Act of 1934  
 16 (15 U.S.C. 78o–3) is amended by inserting after subsection  
 17 (i) the following new subsection:

18 “(j) **REGISTRATION FOR SALES OF PRIVATE SECURI-**  
 19 **TIES OFFERINGS.**—A registered securities association shall  
 20 create a limited qualification category for any associated  
 21 person of a member who effects sales as part of a primary  
 22 offering of securities not involving a public offering, pursu-  
 23 ant to section 3(b), 4(2), or 4(6) of the Securities Act of  
 24 1933 and the rules and regulations thereunder, and shall  
 25 deem qualified in such limited qualification category, with-



1 out testing, any bank employee who, in the six month period  
 2 preceding the date of the enactment of this Act, engaged in  
 3 effecting such sales.”.

4 **SEC. 204. INFORMATION SHARING.**

5 Section 18 of the Federal Deposit Insurance Act is  
 6 amended by adding at the end the following new subsection:

7 “(t) **RECORDKEEPING REQUIREMENTS.**—

8 “(1) **REQUIREMENTS.**—Each appropriate Fed-  
 9 eral banking agency, after consultation with and con-  
 10 sideration of the views of the Commission, shall estab-  
 11 lish recordkeeping requirements for banks relying on  
 12 exceptions contained in paragraphs (4) and (5) of  
 13 section 3(a) of the Securities Exchange Act of 1934.  
 14 Such recordkeeping requirements shall be sufficient to  
 15 demonstrate compliance with the terms of such excep-  
 16 tions and be designed to facilitate compliance with  
 17 such exceptions. Each appropriate Federal banking  
 18 agency shall make any such information available to  
 19 the Commission upon request.

20 “(2) **DEFINITIONS.**—As used in this subsection  
 21 the term ‘Commission’ means the Securities and Ex-  
 22 change Commission.”.

1 **SEC. 205. TREATMENT OF NEW HYBRID PRODUCTS.**

2       *Section 15 of the Securities Exchange Act of 1934 (15*  
 3 *U.S.C. 78o) is amended by adding at the end the following*  
 4 *new subsection:*

5       “(i) *RULEMAKING TO EXTEND REQUIREMENTS TO*  
 6 *NEW HYBRID PRODUCTS.—*

7               “(1) *LIMITATION.—The Commission shall not—*

8                       “(A) *require a bank to register as a broker*  
 9                       *or dealer under this section because the bank en-*  
 10                       *gages in any transaction in, or buys or sells, a*  
 11                       *new hybrid product; or*

12                       “(B) *bring an action against a bank for a*  
 13                       *failure to comply with a requirement described*  
 14                       *in subparagraph (A),*

15               *unless the Commission has imposed such requirement*  
 16               *by rule or regulation issued in accordance with this*  
 17               *section.*

18               “(2) *CRITERIA FOR RULEMAKING.—The Commis-*  
 19               *sion shall not impose a requirement under paragraph*  
 20               *(1) of this subsection with respect to any new hybrid*  
 21               *product unless the Commission determines that—*

22                       “(A) *the new hybrid product is a security;*  
 23                       *and*

24                       “(B) *imposing such requirement is nec-*  
 25                       *essary or appropriate in the public interest and*

1       *for the protection of investors, consistent with the*  
2       *requirements of section 3(f).*

3       “(3) *CONSIDERATIONS.—In making a deter-*  
4       *mination under paragraph (2), the Commission shall*  
5       *consider—*

6               “(A) *the nature of the new hybrid product;*  
7       *and*

8               “(B) *the history, purpose, extent, and ap-*  
9       *propriateness of the regulation of the new hybrid*  
10       *product under the Federal securities laws and*  
11       *under the Federal banking laws.*

12       “(4) *CONSULTATION.—In promulgating rules*  
13       *under this subsection, the Commission shall consult*  
14       *with and consider the views of the Board of Governors*  
15       *of the Federal Reserve System regarding the nature of*  
16       *the new hybrid product, the history, purpose, extent,*  
17       *and appropriateness of the regulation of the new*  
18       *product under the Federal banking laws, and the im-*  
19       *pect of the proposed rule on the banking industry.*

20       “(5) *NEW HYBRID PRODUCT.—For purposes of*  
21       *this subsection, the term ‘new hybrid product’ means*  
22       *a product that—*

23               “(A) *was not subjected to regulation by the*  
24       *Commission as a security prior to the date of the*  
25       *enactment of this subsection; and*

1                   “(B) is not an excepted banking product, as  
 2                   such term is defined in section 206 of the Finan-  
 3                   cial Services Act of 1999.”.

4 **SEC. 206. DEFINITION OF EXCEPTED BANKING PRODUCT.**

5           (a) *DEFINITION OF EXCEPTED BANKING PRODUCT.*—

6 *For purposes of paragraphs (4) and (5) of section 3(a) of*  
 7 *the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (4),*  
 8 *(5)), the term “excepted banking product” means—*

9                   (1) *a deposit account, savings account, certificate*  
 10                  *of deposit, or other deposit instrument issued by a*  
 11                  *bank;*

12                  (2) *a banker’s acceptance;*

13                  (3) *a letter of credit issued or loan made by a*  
 14                  *bank;*

15                  (4) *a debit account at a bank arising from a*  
 16                  *credit card or similar arrangement;*

17                  (5) *a participation in a loan which the bank or*  
 18                  *an affiliate of the bank (other than a broker or dealer)*  
 19                  *funds, participates in, or owns that is sold—*

20                       (A) *to qualified investors; or*

21                       (B) *to other persons that—*

22                               (i) *have the opportunity to review and*  
 23                               *assess any material information, including*  
 24                               *information regarding the borrower’s credit-*  
 25                               *worthiness; and*

1                   (ii) based on such factors as financial  
2                   sophistication, net worth, and knowledge  
3                   and experience in financial matters, have  
4                   the capability to evaluate the information  
5                   available, as determined under generally  
6                   applicable banking standards or guidelines;  
7                   or

8                   (6) a derivative instrument that involves or re-  
9                   lates to—

10                   (A) currencies, except options on currencies  
11                   that trade on a national securities exchange;

12                   (B) interest rates, except interest rate deriv-  
13                   ative instruments that—

14                   (i) are based on a security or a group  
15                   or index of securities (other than govern-  
16                   ment securities or a group or index of gov-  
17                   ernment securities);

18                   (ii) provide for the delivery of one or  
19                   more securities (other than government se-  
20                   curities); or

21                   (iii) trade on a national securities ex-  
22                   change; or

23                   (C) commodities, other rates, indices, or  
24                   other assets, except derivative instruments that—

1                   (i) are securities or that are based on  
 2                   a group or index of securities (other than  
 3                   government securities or a group or index of  
 4                   government securities);

5                   (ii) provide for the delivery of one or  
 6                   more securities (other than government se-  
 7                   curities); or

8                   (iii) trade on a national securities ex-  
 9                   change.

10       (b) *CLASSIFICATION LIMITED.*—Classification of a  
 11       particular product as an excepted banking product pursu-  
 12       ant to this section shall not be construed as finding or im-  
 13       plying that such product is or is not a security for any  
 14       purpose under the securities laws, or is or is not an account,  
 15       agreement, contract, or transaction for any purpose under  
 16       the *Commodity Exchange Act*.

17       (c) *INCORPORATED DEFINITIONS.*—For purposes of  
 18       this section—

19               (1) the terms “bank”, “qualified investor”, and  
 20               “securities laws” have the same meanings given in  
 21               section 3(a) of the *Securities Exchange Act of 1934*,  
 22               as amended by this Act; and

23               (2) the term “government securities” has the  
 24               meaning given in section 3(a)(42) of such Act (as  
 25               amended by this Act), and, for purposes of this sec-

1        *tion, commercial paper, bankers acceptances, and*  
 2        *commercial bills shall be treated in the same manner*  
 3        *as government securities.*

4    **SEC. 207. ADDITIONAL DEFINITIONS.**

5        *Section 3(a) of the Securities Exchange Act of 1934*  
 6        *is amended by adding at the end the following new para-*  
 7        *graphs:*

8                *“(54) DERIVATIVE INSTRUMENT.—*

9                        *“(A) DEFINITION.—The term ‘derivative in-*  
 10                        *strument’ means any individually negotiated*  
 11                        *contract, agreement, warrant, note, or option*  
 12                        *that is based, in whole or in part, on the value*  
 13                        *of, any interest in, or any quantitative measure*  
 14                        *or the occurrence of any event relating to, one or*  
 15                        *more commodities, securities, currencies, interest*  
 16                        *or other rates, indices, or other assets, but does*  
 17                        *not include an excepted banking product, as de-*  
 18                        *finied in paragraphs (1) through (5) of section*  
 19                        *206(a) of the Financial Services Act of 1999.*

20                        *“(B) CLASSIFICATION LIMITED.—Classifica-*  
 21                        *tion of a particular contract as a derivative in-*  
 22                        *strument pursuant to this paragraph shall not be*  
 23                        *construed as finding or implying that such in-*  
 24                        *strument is or is not a security for any purpose*  
 25                        *under the securities laws, or is or is not an ac-*

count, agreement, contract, or transaction for any purpose under the Commodity Exchange Act.

“(55) *QUALIFIED INVESTOR*.—

“(A) *DEFINITION*.—For purposes of this title, the term ‘qualified investor’ means—

“(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

“(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

“(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

“(iv) any small business investment company licensed by the United States Small Business Administration under sec-



tion 301 (c) or (d) of the Small Business  
Investment Act of 1958;

“(v) any State sponsored employee  
benefit plan, or any other employee benefit  
plan, within the meaning of the Employee  
Retirement Income Security Act of 1974,  
other than an individual retirement ac-  
count, if the investment decisions are made  
by a plan fiduciary, as defined in section  
3(21) of that Act, which is either a bank,  
savings and loan association, insurance  
company, or registered investment adviser;

“(vi) any trust whose purchases of se-  
curities are directed by a person described  
in clauses (i) through (v) of this subpara-  
graph;

“(vii) any market intermediary ex-  
empt under section 3(c)(2) of the Investment  
Company Act of 1940;

“(viii) any associated person of a  
broker or dealer other than a natural per-  
son;

“(ix) any foreign bank (as defined in  
section 1(b)(7) of the International Banking  
Act of 1978);

1                   “(x) the government of any foreign  
2                   country;

3                   “(xi) any corporation, company, or  
4                   partnership that owns and invests on a dis-  
5                   cretionary basis, not less than \$10,000,000  
6                   in investments;

7                   “(xii) any natural person who owns  
8                   and invests on a discretionary basis, not  
9                   less than \$10,000,000 in investments;

10                  “(xiii) any government or political  
11                  subdivision, agency, or instrumentality of a  
12                  government who owns and invests on a dis-  
13                  cretionary basis not less than \$50,000,000  
14                  in investments; or

15                  “(xiv) any multinational or supra-  
16                  national entity or any agency or instru-  
17                  mentality thereof.

18                  “(B) *ADDITIONAL AUTHORITY.*—*The Com-*  
19                  *mission may, by rule or order, define a ‘qualified*  
20                  *investor’ as any other person, taking into consid-*  
21                  *eration such factors as the financial sophistica-*  
22                  *tion of the person, net worth, and knowledge and*  
23                  *experience in financial matters.”.*

1 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

2 *Section 3(a)(42) of the Securities Exchange Act of*  
3 *1934 (15 U.S.C. 78c(a)(42)) is amended—*

4 *(1) by striking “or” at the end of subparagraph*  
5 *(C);*

6 *(2) by striking the period at the end of subpara-*  
7 *graph (D) and inserting “; or”; and*

8 *(3) by adding at the end the following new sub-*  
9 *paragraph:*

10 *“(E) for purposes of sections 15, 15C, and*  
11 *17A as applied to a bank, a qualified Canadian*  
12 *government obligation as defined in section 5136*  
13 *of the Revised Statutes of the United States.”.*

14 **SEC. 209. EFFECTIVE DATE.**

15 *This subtitle shall take effect at the end of the 270-*  
16 *day period beginning on the date of the enactment of this*  
17 *Act.*

18 **SEC. 210. RULE OF CONSTRUCTION.**

19 *Nothing in this Act shall supersede, affect, or otherwise*  
20 *limit the scope and applicability of the Commodity Ex-*  
21 *change Act (7 U.S.C. 1 et seq.).*

***Subtitle B—Bank Investment  
Company Activities***

***SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY  
AFFILIATED BANK.***

*(a) MANAGEMENT COMPANIES.—Section 17(f) of the  
Investment Company Act of 1940 (15 U.S.C. 80a–17(f)) is  
amended—*

*(1) by redesignating paragraphs (1), (2), and (3)  
as subparagraphs (A), (B), and (C), respectively;*

*(2) by striking “(f) Every registered” and insert-  
ing the following:*

*“(f) CUSTODY OF SECURITIES.—*

*“(1) Every registered”;*

*(3) by redesignating the second, third, fourth,  
and fifth sentences of such subsection as paragraphs  
(2) through (5), respectively, and indenting the left  
margin of such paragraphs appropriately; and*

*(4) by adding at the end the following new para-  
graph:*

*“(6) The Commission may adopt rules and regu-  
lations, and issue orders, consistent with the protec-  
tion of investors, prescribing the conditions under  
which a bank, or an affiliated person of a bank, either  
of which is an affiliated person, promoter, organizer,  
or sponsor of, or principal underwriter for, a reg-*

1        *istered management company may serve as custodian*  
 2        *of that registered management company.”.*

3        *(b) UNIT INVESTMENT TRUSTS.—Section 26 of the In-*  
 4        *vestment Company Act of 1940 (15 U.S.C. 80a–26) is*  
 5        *amended—*

6                *(1) by redesignating subsections (b) through (e)*  
 7        *as subsections (c) through (f), respectively; and*

8                *(2) by inserting after subsection (a) the following*  
 9        *new subsection:*

10        *“(b) The Commission may adopt rules and regula-*  
 11        *tions, and issue orders, consistent with the protection of in-*  
 12        *vestors, prescribing the conditions under which a bank, or*  
 13        *an affiliated person of a bank, either of which is an affili-*  
 14        *ated person of a principal underwriter for, or depositor of,*  
 15        *a registered unit investment trust, may serve as trustee or*  
 16        *custodian under subsection (a)(1).”.*

17        *(c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)*  
 18        *of the Investment Company Act of 1940 (15 U.S.C. 80a–*  
 19        *35(a)) is amended—*

20                *(1) in paragraph (1), by striking “or” at the*  
 21        *end;*

22                *(2) in paragraph (2), by striking the period at*  
 23        *the end and inserting “; or”; and*

24                *(3) by inserting after paragraph (2) the fol-*  
 25        *lowing:*

1 “(3) as custodian.”.

2 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**  
 3 **PANY.**

4 *Section 17(a) of the Investment Company Act of 1940*  
 5 *(15 U.S.C. 80a-17(a)) is amended—*

6 *(1) by striking “or” at the end of paragraph (2);*

7 *(2) by striking the period at the end of para-*  
 8 *graph (3) and inserting “; or”; and*

9 *(3) by adding at the end the following new para-*  
 10 *graph:*

11 *“(4) to loan money or other property to such reg-*  
 12 *istered company, or to any company controlled by*  
 13 *such registered company, in contravention of such*  
 14 *rules, regulations, or orders as the Commission may*  
 15 *prescribe or issue consistent with the protection of in-*  
 16 *vestors.”.*

17 **SEC. 213. INDEPENDENT DIRECTORS.**

18 *(a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-*  
 19 *ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))*  
 20 *is amended—*

21 *(1) by striking clause (v) and inserting the fol-*  
 22 *lowing new clause:*

23 *“(v) any person or any affiliated per-*  
 24 *son of a person (other than a registered in-*  
 25 *vestment company) that, at any time dur-*

ing the 6-month period preceding the date  
of the determination of whether that person  
or affiliated person is an interested person,  
has executed any portfolio transactions for,  
engaged in any principal transactions with,  
or distributed shares for—

“(I) the investment company;

“(II) any other investment com-  
pany having the same investment ad-  
viser as such investment company or  
holding itself out to investors as a re-  
lated company for purposes of invest-  
ment or investor services; or

“(III) any account over which the  
investment company’s investment ad-  
viser has brokerage placement discre-  
tion,”;

(2) by redesignating clause (vi) as clause (vii);

and

(3) by inserting after clause (v) the following  
new clause:

“(vi) any person or any affiliated per-  
son of a person (other than a registered in-  
vestment company) that, at any time dur-  
ing the 6-month period preceding the date

1           *of the determination of whether that person*  
 2           *or affiliated person is an interested person,*  
 3           *has loaned money or other property to—*

4                     *“(I) the investment company;*

5                     *“(II) any other investment com-*  
 6                     *pany having the same investment ad-*  
 7                     *viser as such investment company or*  
 8                     *holding itself out to investors as a re-*  
 9                     *lated company for purposes of invest-*  
 10                    *ment or investor services; or*

11                    *“(III) any account for which the*  
 12                    *investment company’s investment ad-*  
 13                    *viser has borrowing authority,”.*

14           (b) *CONFORMING AMENDMENT.—Section 2(a)(19)(B)*  
 15           *of the Investment Company Act of 1940 (15 U.S.C. 80a–*  
 16           *2(a)(19)(B)) is amended—*

17                    (1) *by striking clause (v) and inserting the fol-*  
 18                    *lowing new clause:*

19                    *“(v) any person or any affiliated per-*  
 20                    *son of a person (other than a registered in-*  
 21                    *vestment company) that, at any time dur-*  
 22                    *ing the 6-month period preceding the date*  
 23                    *of the determination of whether that person*  
 24                    *or affiliated person is an interested person,*  
 25                    *has executed any portfolio transactions for,*



engaged in any principal transactions with,  
or distributed shares for—

“(I) any investment company for  
which the investment adviser or principal underwriter serves as such;

“(II) any investment company  
holding itself out to investors, for purposes of investment or investor services,  
as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

“(III) any account over which the investment adviser has brokerage placement discretion,”;

(2) by redesignating clause (vi) as clause (vii);

and

(3) by inserting after clause (v) the following new clause:

“(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person

1                   or affiliated person is an interested person,  
2                   has loaned money or other property to—

3                   “(I) any investment company for  
4                   which the investment adviser or prin-  
5                   cipal underwriter serves as such;

6                   “(II) any investment company  
7                   holding itself out to investors, for pur-  
8                   poses of investment or investor services,  
9                   as a company related to any invest-  
10                  ment company for which the invest-  
11                  ment adviser or principal underwriter  
12                  serves as such; or

13                  “(III) any account for which the  
14                  investment adviser has borrowing au-  
15                  thority,”.

16           (c) *AFFILIATION OF DIRECTORS.*—Section 10(c) of the  
17   *Investment Company Act of 1940 (15 U.S.C. 80a–10(c))* is  
18   amended by striking “bank, except” and inserting “bank  
19   (together with its affiliates and subsidiaries) or any one  
20   bank holding company (together with its affiliates and sub-  
21   sidiaries) (as such terms are defined in section 2 of the  
22   *Bank Holding Company Act of 1956)*, except”.

23           (d) *EFFECTIVE DATE.*—The amendments made by this  
24   section shall take effect at the end of the 1-year period begin-  
25   ning on the date of the enactment of this subtitle.

1 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

2 *Section 35(a) of the Investment Company Act of 1940*  
3 *(15 U.S.C. 80a-34(a)) is amended to read as follows:*

4 *“(a) MISREPRESENTATION OF GUARANTEES.—*

5 *“(1) IN GENERAL.—It shall be unlawful for any*  
6 *person, issuing or selling any security of which a reg-*  
7 *istered investment company is the issuer, to represent*  
8 *or imply in any manner whatsoever that such secu-*  
9 *rity or company—*

10 *“(A) has been guaranteed, sponsored, rec-*  
11 *ommended, or approved by the United States, or*  
12 *any agency, instrumentality or officer of the*  
13 *United States;*

14 *“(B) has been insured by the Federal De-*  
15 *posit Insurance Corporation; or*

16 *“(C) is guaranteed by or is otherwise an ob-*  
17 *ligation of any bank or insured depository insti-*  
18 *tution.*

19 *“(2) DISCLOSURES.—Any person issuing or sell-*  
20 *ing the securities of a registered investment company*  
21 *that is advised by, or sold through, a bank shall*  
22 *prominently disclose that an investment in the com-*  
23 *pany is not insured by the Federal Deposit Insurance*  
24 *Corporation or any other government agency. The*  
25 *Commission may adopt rules and regulations, and*  
26 *issue orders, consistent with the protection of inves-*

1        *tors, prescribing the manner in which the disclosure*  
 2        *under this paragraph shall be provided.*

3                *“(3) DEFINITIONS.—The terms ‘insured deposi-*  
 4        *tory institution’ and ‘appropriate Federal banking*  
 5        *agency’ have the same meanings given in section 3 of*  
 6        *the Federal Deposit Insurance Act.”.*

7    **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**  
 8                **MENT COMPANY ACT OF 1940.**

9        *Section 2(a)(6) of the Investment Company Act of*  
 10    *1940 (15 U.S.C. 80a–2(a)(6)) is amended to read as follows:*

11                *“(6) The term ‘broker’ has the same meaning*  
 12        *given in section 3 of the Securities Exchange Act of*  
 13        *1934, except that such term does not include any per-*  
 14        *son solely by reason of the fact that such person is an*  
 15        *underwriter for one or more investment companies.”.*

16    **SEC. 216. DEFINITION OF DEALER UNDER THE INVESTMENT**  
 17                **COMPANY ACT OF 1940.**

18        *Section 2(a)(11) of the Investment Company Act of*  
 19    *1940 (15 U.S.C. 80a–2(a)(11)) is amended to read as fol-*  
 20    *lows:*

21                *“(11) The term ‘dealer’ has the same meaning*  
 22        *given in the Securities Exchange Act of 1934, but*  
 23        *does not include an insurance company or investment*  
 24        *company.”.*

1 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
 2 **TION OF INVESTMENT ADVISER FOR BANKS**  
 3 **THAT ADVISE INVESTMENT COMPANIES.**

4 (a) *INVESTMENT ADVISER.*—Section 202(a)(11)(A) of  
 5 the *Investment Advisers Act of 1940* (15 U.S.C. 80b–  
 6 2(a)(11)(A)) is amended by striking “investment company”  
 7 and inserting “investment company, except that the term  
 8 ‘investment adviser’ includes any bank or bank holding  
 9 company to the extent that such bank or bank holding com-  
 10 pany serves or acts as an investment adviser to a registered  
 11 investment company, but if, in the case of a bank, such serv-  
 12 ices or actions are performed through a separately identifi-  
 13 able department or division, the department or division,  
 14 and not the bank itself, shall be deemed to be the investment  
 15 adviser”.

16 (b) *SEPARATELY IDENTIFIABLE DEPARTMENT OR DI-*  
 17 *VISION.*—Section 202(a) of the *Investment Advisers Act of*  
 18 *1940* (15 U.S.C. 80b–2(a)) is amended by adding at the  
 19 end the following:

20 “(26) The term ‘separately identifiable depart-  
 21 ment or division’ of a bank means a unit—

22 “(A) that is under the direct supervision of  
 23 an officer or officers designated by the board of  
 24 directors of the bank as responsible for the day-  
 25 to-day conduct of the bank’s investment adviser  
 26 activities for one or more investment companies,

1       including the supervision of all bank employees  
 2       engaged in the performance of such activities;  
 3       and

4               “(B) for which all of the records relating to  
 5       its investment adviser activities are separately  
 6       maintained in or extractable from such unit’s  
 7       own facilities or the facilities of the bank, and  
 8       such records are so maintained or otherwise ac-  
 9       cessible as to permit independent examination  
 10      and enforcement by the Commission of this Act  
 11      or the Investment Company Act of 1940 and  
 12      rules and regulations promulgated under this  
 13      Act or the Investment Company Act of 1940.”.

14 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**  
 15 **MENT ADVISERS ACT OF 1940.**

16       Section 202(a)(3) of the Investment Advisers Act of  
 17   1940 (15 U.S.C. 80b–2(a)(3)) is amended to read as follows:

18               “(3) The term ‘broker’ has the same meaning  
 19      given in section 3 of the Securities Exchange Act of  
 20      1934.”.

21 **SEC. 219. DEFINITION OF DEALER UNDER THE INVESTMENT**  
 22 **ADVISERS ACT OF 1940.**

23       Section 202(a)(7) of the Investment Advisers Act of  
 24   1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as follows:

1           “(7) The term ‘dealer’ has the same meaning  
2           given in section 3 of the Securities Exchange Act of  
3           1934, but does not include an insurance company or  
4           investment company.”.

5   **SEC. 220. INTERAGENCY CONSULTATION.**

6           *The Investment Advisers Act of 1940 (15 U.S.C. 80b–*  
7   *1 et seq.) is amended by inserting after section 210 the fol-*  
8   *lowing new section:*

9   **“SEC. 210A. CONSULTATION.**

10          “(a) *EXAMINATION RESULTS AND OTHER INFORMA-*  
11   *TION.—*

12               “(1) *The appropriate Federal banking agency*  
13   *shall provide the Commission upon request the results*  
14   *of any examination, reports, records, or other infor-*  
15   *mation to which such agency may have access with*  
16   *respect to the investment advisory activities—*

17                       “(A) *of any—*

18                               “(i) *bank holding company;*

19                               “(ii) *bank; or*

20                               “(iii) *separately identifiable depart-*  
21   *ment or division of a bank,*

22                       *that is registered under section 203 of this title;*

23                       *and*

24                       “(B) *in the case of a bank holding company*  
25   *or bank that has a subsidiary or a separately*

1           *identifiable department or division registered*  
 2           *under that section, of such bank or bank holding*  
 3           *company.*

4           “(2) *The Commission shall provide to the appro-*  
 5           *priate Federal banking agency upon request the re-*  
 6           *sults of any examination, reports, records, or other*  
 7           *information with respect to the investment advisory*  
 8           *activities of any bank holding company, bank, or sep-*  
 9           *arately identifiable department or division of a bank,*  
 10          *which is registered under section 203 of this title.*

11          “(b) *EFFECT ON OTHER AUTHORITY.—Nothing in this*  
 12          *section shall limit in any respect the authority of the appro-*  
 13          *priate Federal banking agency with respect to such bank*  
 14          *holding company, bank, or department or division under*  
 15          *any other provision of law.*

16          “(c) *DEFINITION.—For purposes of this section, the*  
 17          *term ‘appropriate Federal banking agency’ shall have the*  
 18          *same meaning given in section 3 of the Federal Deposit In-*  
 19          *surance Act.’.*

20          **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

21          “(a) *SECURITIES ACT OF 1933.—Section 3(a)(2) of the*  
 22          *Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended*  
 23          *by striking “or any interest or participation in any com-*  
 24          *mon trust fund or similar fund maintained by a bank ex-*  
 25          *clusively for the collective investment and reinvestment of*



1 *assets contributed thereto by such bank in its capacity as*  
 2 *trustee, executor, administrator, or guardian” and insert-*  
 3 *ing “or any interest or participation in any common trust*  
 4 *fund or similar fund that is excluded from the definition*  
 5 *of the term ‘investment company’ under section 3(c)(3) of*  
 6 *the Investment Company Act of 1940”.*

7       (b) *SECURITIES EXCHANGE ACT OF 1934.—Section*  
 8 *3(a)(12)(A)(iii) of the Securities Exchange Act of 1934 (15*  
 9 *U.S.C. 78c(a)(12)(A)(iii)) is amended to read as follows:*

10               *“(iii) any interest or participation in any*  
 11               *common trust fund or similar fund that is ex-*  
 12               *cluded from the definition of the term ‘invest-*  
 13               *ment company’ under section 3(c)(3) of the In-*  
 14               *vestment Company Act of 1940;”.*

15       (c) *INVESTMENT COMPANY ACT OF 1940.—Section*  
 16 *3(c)(3) of the Investment Company Act of 1940 (15 U.S.C.*  
 17 *80a–3(c)(3)) is amended by inserting before the period the*  
 18 *following: “, if—*

19               *“(A) such fund is employed by the bank*  
 20               *solely as an aid to the administration of trusts,*  
 21               *estates, or other accounts created and main-*  
 22               *tained for a fiduciary purpose;*

23               *“(B) except in connection with the ordinary*  
 24               *advertising of the bank’s fiduciary services, in-*  
 25               *terests in such fund are not—*

1 “(i) advertised; or

2 “(ii) offered for sale to the general pub-  
3 lic; and

4 “(C) fees and expenses charged by such fund  
5 are not in contravention of fiduciary principles  
6 established under applicable Federal or State  
7 law”.

8 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**  
9 **ING CONTROLLING INTEREST IN REG-**  
10 **ISTERED INVESTMENT COMPANY.**

11 *Section 15 of the Investment Company Act of 1940 (15*  
12 *U.S.C. 80a-15) is amended by adding at the end the fol-*  
13 *lowing new subsection:*

14 “(g) **CONTROLLING INTEREST IN INVESTMENT COM-**  
15 **PANY PROHIBITED.**—

16 “(1) **IN GENERAL.**—If an investment adviser to  
17 a registered investment company, or an affiliated per-  
18 son of that investment adviser, holds a controlling in-  
19 terest in that registered investment company in a  
20 trustee or fiduciary capacity, such person shall—

21 “(A) if it holds the shares in a trustee or fi-  
22 duciary capacity with respect to any employee  
23 benefit plan subject to the Employee Retirement  
24 Income Security Act of 1974, transfer the power  
25 to vote the shares of the investment company

1       *through to another person acting in a fiduciary*  
2       *capacity with respect to the plan who is not an*  
3       *affiliated person of that investment adviser or*  
4       *any affiliated person thereof; or*

5               *“(B) if it holds the shares in a trustee or fi-*  
6       *duciary capacity with respect to any person or*  
7       *entity other than an employee benefit plan sub-*  
8       *ject to the Employee Retirement Income Security*  
9       *Act of 1974—*

10              *“(i) transfer the power to vote the*  
11       *shares of the investment company through*  
12       *to—*

13              *“(I) the beneficial owners of the*  
14       *shares;*

15              *“(II) another person acting in a*  
16       *fiduciary capacity who is not an affili-*  
17       *ated person of that investment adviser*  
18       *or any affiliated person thereof; or*

19              *“(III) any person authorized to*  
20       *receive statements and information*  
21       *with respect to the trust who is not an*  
22       *affiliated person of that investment ad-*  
23       *viser or any affiliated person thereof;*

24              *“(ii) vote the shares of the investment*  
25       *company held by it in the same proportion*

1           *as shares held by all other shareholders of*  
 2           *the investment company; or*

3           “(iii) *vote the shares of the investment*  
 4           *company as otherwise permitted under such*  
 5           *rules, regulations, or orders as the Commis-*  
 6           *sion may prescribe or issue consistent with*  
 7           *the protection of investors.*

8           “(2) *EXEMPTION.—Paragraph (1) shall not*  
 9           *apply to any investment adviser to a registered in-*  
 10          *vestment company, or any affiliated person of that*  
 11          *investment adviser, that holds shares of the invest-*  
 12          *ment company in a trustee or fiduciary capacity if*  
 13          *that registered investment company consists solely of*  
 14          *assets held in such capacities.*

15          “(3) *SAFE HARBOR.—No investment adviser to a*  
 16          *registered investment company or any affiliated per-*  
 17          *son of such investment adviser shall be deemed to have*  
 18          *acted unlawfully or to have breached a fiduciary duty*  
 19          *under State or Federal law solely by reason of acting*  
 20          *in accordance with clause (i), (ii), or (iii) of para-*  
 21          *graph (1)(B).”.*

22 **SEC. 223. STATUTORY DISQUALIFICATION FOR BANK**  
 23 **WRONGDOING.**

24          *Section 9(a) of the Investment Company Act of 1940*  
 25          *(15 U.S.C. 80a-9(a)) is amended in paragraphs (1) and*

1 (2) by striking “securities dealer, transfer agent,” and in-  
 2 serting “securities dealer, bank, transfer agent,”.

3 **SEC. 224. CONFORMING CHANGE IN DEFINITION.**

4       Section 2(a)(5) of the Investment Company Act of  
 5 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking “(A)  
 6 a banking institution organized under the laws of the  
 7 United States” and inserting “(A) a depository institution  
 8 (as defined in section 3 of the Federal Deposit Insurance  
 9 Act) or a branch or agency of a foreign bank (as such terms  
 10 are defined in section 1(b) of the International Banking Act  
 11 of 1978)”.

12 **SEC. 225. CONFORMING AMENDMENT.**

13       Section 202 of the Investment Advisers Act of 1940 (15  
 14 U.S.C. 80b-2) is amended by adding at the end the fol-  
 15 lowing new subsection:

16       “(c) *CONSIDERATION OF PROMOTION OF EFFICIENCY,*  
 17 *COMPETITION, AND CAPITAL FORMATION.*—Whenever pur-  
 18 suant to this title the Commission is engaged in rulemaking  
 19 and is required to consider or determine whether an action  
 20 is necessary or appropriate in the public interest, the Com-  
 21 mission shall also consider, in addition to the protection  
 22 of investors, whether the action will promote efficiency, com-  
 23 petition, and capital formation.”.

1 **SEC. 226. CHURCH PLAN EXCLUSION.**

2       Section 3(c)(14) of the Investment Company Act of  
3 1940 (15 U.S.C. 80a-3(c)(14)) is amended—

4           (1) by redesignating clauses (i) and (ii) of sub-  
5 paragraph (B) as subclauses (I) and (II), respec-  
6 tively;

7           (2) by redesignating subparagraphs (A) and (B)  
8 as clauses (i) and (ii), respectively;

9           (3) by inserting “(A)” after “(14)”; and

10          (4) by adding at the end the following new sub-  
11 paragraph:

12           “(B) If a registered investment company would  
13 be excluded from the definition of investment com-  
14 pany under this subsection but for the fact that some  
15 of the company’s assets do not satisfy the condition  
16 of subparagraph (A)(ii) of this paragraph, then any  
17 investment adviser to the company or affiliated per-  
18 son of such investment adviser shall not be subject to  
19 the requirements of section 15(g)(1)(B) with respect to  
20 shares of the investment company.”.

21 **SEC. 227. EFFECTIVE DATE.**

22       This subtitle shall take effect 90 days after the date  
23 of the enactment of this Act.

1 ***Subtitle C—Securities and Ex-***  
 2 ***change Commission Supervision***  
 3 ***of Investment Bank Holding***  
 4 ***Companies***

5 ***SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING***  
 6 ***COMPANIES BY THE SECURITIES AND EX-***  
 7 ***CHANGE COMMISSION.***

8 *(a) AMENDMENT.—Section 17 of the Securities Ex-*  
 9 *change Act of 1934 (15 U.S.C. 78q) is amended—*

10 *(1) by redesignating subsection (i) as subsection*  
 11 *(k); and*

12 *(2) by inserting after subsection (h) the following*  
 13 *new subsection:*

14 *“(i) INVESTMENT BANK HOLDING COMPANIES.—*

15 *“(1) ELECTIVE SUPERVISION OF AN INVESTMENT*  
 16 *BANK HOLDING COMPANY NOT HAVING A BANK OR*  
 17 *SAVINGS ASSOCIATION AFFILIATE.—*

18 *“(A) IN GENERAL.—An investment bank*  
 19 *holding company that is not—*

20 *“(i) an affiliate of a wholesale finan-*  
 21 *cial institution, an insured bank (other*  
 22 *than an institution described in subpara-*  
 23 *graph (D), (F), or (G) of section 2(c)(2), or*  
 24 *held under section 4(f), of the Bank Holding*

1           *Company Act of 1956), or a savings asso-*  
2           *ciation;*

3           “(ii) *a foreign bank, foreign company,*  
4           *or company that is described in section 8(a)*  
5           *of the International Banking Act of 1978;*  
6           *or*

7           “(iii) *a foreign bank that controls, di-*  
8           *rectly or indirectly, a corporation chartered*  
9           *under section 25A of the Federal Reserve*  
10          *Act,*

11          *may elect to become supervised by filing with the*  
12          *Commission a notice of intention to become su-*  
13          *pervised, pursuant to subparagraph (B) of this*  
14          *paragraph. Any investment bank holding com-*  
15          *pany filing such a notice shall be supervised in*  
16          *accordance with this section and comply with the*  
17          *rules promulgated by the Commission applicable*  
18          *to supervised investment bank holding compa-*  
19          *nies.*

20          “(B) *NOTIFICATION OF STATUS AS A SUPER-*  
21          *ISED INVESTMENT BANK HOLDING COMPANY.—*

22          *An investment bank holding company that elects*  
23          *under subparagraph (A) to become supervised by*  
24          *the Commission shall file with the Commission a*  
25          *written notice of intention to become supervised*



1       *by the Commission in such form and containing*  
2       *such information and documents concerning such*  
3       *investment bank holding company as the Com-*  
4       *mission, by rule, may prescribe as necessary or*  
5       *appropriate in furtherance of the purposes of*  
6       *this section. Unless the Commission finds that*  
7       *such supervision is not necessary or appropriate*  
8       *in furtherance of the purposes of this section,*  
9       *such supervision shall become effective 45 days*  
10      *after the date of receipt of such written notice by*  
11      *the Commission or within such shorter time pe-*  
12      *riod as the Commission, by rule or order, may*  
13      *determine.*

14       “(2) *ELECTION NOT TO BE SUPERVISED BY THE*  
15      *COMMISSION AS AN INVESTMENT BANK HOLDING COM-*  
16      *PANY.—*

17               “(A) *VOLUNTARY WITHDRAWAL.—A super-*  
18      *vised investment bank holding company that is*  
19      *supervised pursuant to paragraph (1) may, upon*  
20      *such terms and conditions as the Commission*  
21      *deems necessary or appropriate, elect not to be*  
22      *supervised by the Commission by filing a written*  
23      *notice of withdrawal from Commission super-*  
24      *vision. Such notice shall not become effective*  
25      *until 1 year after receipt by the Commission, or*

1        *such shorter or longer period as the Commission*  
2        *deems necessary or appropriate to ensure effec-*  
3        *tive supervision of the material risks to the su-*  
4        *pervised investment bank holding company and*  
5        *to the affiliated broker or dealer, or to prevent*  
6        *evasion of the purposes of this section.*

7                *“(B) DISCONTINUATION OF COMMISSION SU-*  
8        *PERVISION.—If the Commission finds that any*  
9        *supervised investment bank holding company*  
10        *that is supervised pursuant to paragraph (1) is*  
11        *no longer in existence or has ceased to be an in-*  
12        *vestment bank holding company, or if the Com-*  
13        *mission finds that continued supervision of such*  
14        *a supervised investment bank holding company*  
15        *is not consistent with the purposes of this sec-*  
16        *tion, the Commission may discontinue the super-*  
17        *vision pursuant to a rule or order, if any, pro-*  
18        *mulgated by the Commission under this section.*

19                *“(3) SUPERVISION OF INVESTMENT BANK HOLD-*  
20        *ING COMPANIES.—*

21                *“(A) RECORDKEEPING AND REPORTING.—*

22                        *“(i) IN GENERAL.—Every supervised*  
23        *investment bank holding company and each*  
24        *affiliate thereof shall make and keep for pre-*  
25        *scribed periods such records, furnish copies*

1           *thereof, and make such reports, as the Com-*  
2           *mission may require by rule, in order to*  
3           *keep the Commission informed as to—*

4                     *“(I) the company’s or affiliate’s*  
5                     *activities, financial condition, policies,*  
6                     *systems for monitoring and controlling*  
7                     *financial and operational risks, and*  
8                     *transactions and relationships between*  
9                     *any broker or dealer affiliate of the su-*  
10                    *pervised investment bank holding com-*  
11                    *pany; and*

12                    *“(II) the extent to which the com-*  
13                    *pany or affiliate has complied with the*  
14                    *provisions of this Act and regulations*  
15                    *prescribed and orders issued under this*  
16                    *Act.*

17                    *“(ii) FORM AND CONTENTS.—Such*  
18                    *records and reports shall be prepared in*  
19                    *such form and according to such specifica-*  
20                    *tions (including certification by an inde-*  
21                    *pendent public accountant), as the Commis-*  
22                    *sion may require and shall be provided*  
23                    *promptly at any time upon request by the*  
24                    *Commission. Such records and reports may*  
25                    *include—*

1                   “(I) a balance sheet and income  
2                   statement;

3                   “(II) an assessment of the consoli-  
4                   dated capital of the supervised invest-  
5                   ment bank holding company;

6                   “(III) an independent auditor’s  
7                   report attesting to the supervised in-  
8                   vestment bank holding company’s com-  
9                   pliance with its internal risk manage-  
10                  ment and internal control objectives;  
11                  and

12                  “(IV) reports concerning the ex-  
13                  tent to which the company or affiliate  
14                  has complied with the provisions of  
15                  this title and any regulations pre-  
16                  scribed and orders issued under this  
17                  title.

18                  “(B) *USE OF EXISTING REPORTS.*—

19                  “(i) *IN GENERAL.*—The Commission  
20                  shall, to the fullest extent possible, accept re-  
21                  ports in fulfillment of the requirements  
22                  under this paragraph that the supervised  
23                  investment bank holding company or its af-  
24                  filiates have been required to provide to an-

1            *other appropriate regulatory agency or self-*  
 2            *regulatory organization.*

3            “(ii) *AVAILABILITY.*—*A supervised in-*  
 4            *vestment bank holding company or an affil-*  
 5            *iate of such company shall provide to the*  
 6            *Commission, at the request of the Commis-*  
 7            *sion, any report referred to in clause (i).*

8            “(C) *EXAMINATION AUTHORITY.*—

9            “(i) *FOCUS OF EXAMINATION AUTHOR-*  
 10           *ITY.*—*The Commission may make examina-*  
 11           *tions of any supervised investment bank*  
 12           *holding company and any affiliate of such*  
 13           *company in order to—*

14           “(I)    *inform the Commission*  
 15           *regarding—*

16           “(aa) *the nature of the oper-*  
 17           *ations and financial condition of*  
 18           *the supervised investment bank*  
 19           *holding company and its affili-*  
 20           *ates;*

21           “(bb) *the financial and oper-*  
 22           *ational risks within the super-*  
 23           *vised investment bank holding*  
 24           *company that may affect any*  
 25           *broker or dealer controlled by such*

1 supervised investment bank hold-  
2 ing company; and

3 “(cc) the systems of the su-  
4 pervised investment bank holding  
5 company and its affiliates for  
6 monitoring and controlling those  
7 risks; and

8 “(II) monitor compliance with the  
9 provisions of this subsection, provisions  
10 governing transactions and relation-  
11 ships between any broker or dealer af-  
12 filiated with the supervised investment  
13 bank holding company and any of the  
14 company’s other affiliates, and appli-  
15 cable provisions of subchapter II of  
16 chapter 53, title 31, United States  
17 Code (commonly referred to as the  
18 ‘Bank Secrecy Act’) and regulations  
19 thereunder.

20 “(ii) *RESTRICTED FOCUS OF EXAMINA-*  
21 *TIONS.—The Commission shall limit the*  
22 *focus and scope of any examination of a su-*  
23 *pervised investment bank holding company*  
24 *to—*

25 “(I) the company; and

1                   “(II) *any affiliate of the company*  
 2                   *that, because of its size, condition, or*  
 3                   *activities, the nature or size of the*  
 4                   *transactions between such affiliate and*  
 5                   *any affiliated broker or dealer, or the*  
 6                   *centralization of functions within the*  
 7                   *holding company system, could, in the*  
 8                   *discretion of the Commission, have a*  
 9                   *materially adverse effect on the oper-*  
 10                   *ational or financial condition of the*  
 11                   *broker or dealer.*

12                   “(iii) *DEFERENCE TO OTHER EXAMI-*  
 13                   *NATIONS.—For purposes of this subpara-*  
 14                   *graph, the Commission shall, to the fullest*  
 15                   *extent possible, use the reports of examina-*  
 16                   *tion of an institution described in subpara-*  
 17                   *graph (D), (F), or (G) of section 2(c)(2), or*  
 18                   *held under section 4(f), of the Bank Holding*  
 19                   *Company Act of 1956 made by the appro-*  
 20                   *priate regulatory agency, or of a licensed*  
 21                   *insurance company made by the appro-*  
 22                   *priate State insurance regulator.*

23                   “(4) *HOLDING COMPANY CAPITAL.—*

24                   “(A) *AUTHORITY.—If the Commission finds*  
 25                   *that it is necessary to adequately supervise in-*

1        *vestment bank holding companies and their*  
 2        *broker or dealer affiliates consistent with the*  
 3        *purposes of this subsection, the Commission may*  
 4        *adopt capital adequacy rules for supervised in-*  
 5        *vestment bank holding companies.*

6                “(B) *METHOD OF CALCULATION.—In devel-*  
 7        *oping rules under this paragraph:*

8                “(i) *DOUBLE LEVERAGE.—The Com-*  
 9        *mission shall consider the use by the super-*  
 10        *vised investment bank holding company of*  
 11        *debt and other liabilities to fund capital in-*  
 12        *vestments in affiliates.*

13               “(ii) *NO UNWEIGHTED CAPITAL*  
 14        *RATIO.—The Commission shall not impose*  
 15        *under this section a capital ratio that is not*  
 16        *based on appropriate risk-weighting consid-*  
 17        *erations.*

18               “(iii) *NO CAPITAL REQUIREMENT ON*  
 19        *REGULATED ENTITIES.—The Commission*  
 20        *shall not, by rule, regulation, guideline,*  
 21        *order or otherwise, impose any capital ade-*  
 22        *quacy provision on a nonbanking affiliate*  
 23        *(other than a broker or dealer) that is in*  
 24        *compliance with applicable capital require-*



ments of another Federal regulatory authority or State insurance authority.

“(iv) *APPROPRIATE EXCLUSIONS.*—The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

“(C) *INTERNAL RISK MANAGEMENT MODELS.*—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

“(5) *FUNCTIONAL REGULATION OF BANKING AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.*—The Commission shall defer to—

“(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956; and

1           “(B) the appropriate State insurance regu-  
 2           lators with regard to all interpretations of, and  
 3           the enforcement of, applicable State insurance  
 4           laws relating to the activities, conduct, and oper-  
 5           ations of insurance companies and insurance  
 6           agents.

7           “(6) *DEFINITIONS.*—For purposes of this sub-  
 8           section:

9           “(A) The term ‘investment bank holding  
 10          company’ means—

11               “(i) any person other than a natural  
 12               person that owns or controls one or more  
 13               brokers or dealers; and

14               “(ii) the associated persons of the in-  
 15               vestment bank holding company.

16           “(B) The term ‘supervised investment bank  
 17          holding company’ means any investment bank  
 18          holding company that is supervised by the Com-  
 19          mission pursuant to this subsection.

20           “(C) The terms ‘affiliate’, ‘bank’, ‘bank  
 21          holding company’, ‘company’, ‘control’, ‘savings  
 22          association’, and ‘wholesale financial institution’  
 23          have the same meanings given in section 2 of the  
 24          Bank Holding Company Act of 1956 (12 U.S.C.  
 25          1841).

1           “(D) The term ‘insured bank’ has the same  
2           meaning given in section 3 of the Federal De-  
3           posit Insurance Act.

4           “(E) The term ‘foreign bank’ has the same  
5           meaning given in section 1(b)(7) of the Inter-  
6           national Banking Act of 1978.

7           “(F) The terms ‘person associated with an  
8           investment bank holding company’ and ‘associ-  
9           ated person of an investment bank holding com-  
10          pany’ mean any person directly or indirectly  
11          controlling, controlled by, or under common con-  
12          trol with, an investment bank holding com-  
13          pany.”.

14          “(j) *AUTHORITY TO LIMIT DISCLOSURE OF INFORMA-*  
15          *TION.*—Notwithstanding any other provision of law, the  
16          Commission shall not be compelled to disclose any informa-  
17          tion required to be reported under subsection (h) or (i) or  
18          any information supplied to the Commission by any domes-  
19          tic or foreign regulatory agency that relates to the financial  
20          or operational condition of any associated person of a  
21          broker or dealer, investment bank holding company, or any  
22          affiliate of an investment bank holding company. Nothing  
23          in this subsection shall authorize the Commission to with-  
24          hold information from Congress, or prevent the Commission  
25          from complying with a request for information from any

1 *other Federal department or agency or any self-regulatory*  
 2 *organization requesting the information for purposes with-*  
 3 *in the scope of its jurisdiction, or complying with an order*  
 4 *of a court of the United States in an action brought by*  
 5 *the United States or the Commission. For purposes of sec-*  
 6 *tion 552 of title 5, United States Code, this subsection shall*  
 7 *be considered a statute described in subsection (b)(3)(B) of*  
 8 *such section 552. In prescribing regulations to carry out*  
 9 *the requirements of this subsection, the Commission shall*  
 10 *designate information described in or obtained pursuant to*  
 11 *subparagraphs (A), (B), and (C) of subsection (i)(5) as con-*  
 12 *fidential information for purposes of section 24(b)(2) of this*  
 13 *title.”.*

14 *(b) CONFORMING AMENDMENTS.—*

15 *(1) Section 3(a)(34) of the Securities Exchange*  
 16 *Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by*  
 17 *adding at the end the following new subparagraph:*

18 *“(H) When used with respect to an institu-*  
 19 *tion described in subparagraph (D), (F), or (G)*  
 20 *of section 2(c)(2), or held under section 4(f), of*  
 21 *the Bank Holding Company Act of 1956—*

22 *“(i) the Comptroller of the Currency,*  
 23 *in the case of a national bank or a bank in*  
 24 *the District of Columbia examined by the*  
 25 *Comptroller of the Currency;*

1           “(ii) the Board of Governors of the  
2           Federal Reserve System, in the case of a  
3           State member bank of the Federal Reserve  
4           System or any corporation chartered under  
5           section 25A of the Federal Reserve Act;

6           “(iii) the Federal Deposit Insurance  
7           Corporation, in the case of any other bank  
8           the deposits of which are insured in accord-  
9           ance with the Federal Deposit Insurance  
10          Act; or

11          “(iv) the Commission in the case of all  
12          other such institutions.”.

13          (2) Section 1112(e) of the Right to Financial  
14          Privacy Act of 1978 (12 U.S.C. 3412(e)) is  
15          amended—

16                (A) by striking “this title” and inserting  
17                “law”; and

18                (B) by inserting “, examination reports”  
19                after “financial records”.

20       **Subtitle D—Disclosure of Customer**  
21       **Costs of Acquiring Financial**  
22       **Products**

23       **SEC. 241. IMPROVED AND CONSISTENT DISCLOSURE.**

24           (a) *REVISED REGULATIONS REQUIRED.*—Within 1  
25       year after the date of the enactment of this Act, each Federal

1 *financial regulatory authority shall prescribe rules, or revi-*  
 2 *sions to its rules, to improve the accuracy, simplicity, and*  
 3 *completeness, and to make more consistent, the disclosure*  
 4 *of information by persons subject to the jurisdiction of such*  
 5 *regulatory authority concerning any commissions, fees, or*  
 6 *other costs incurred by customers in the acquisition of fi-*  
 7 *nancial products.*

8       (b) *CONSULTATION.*—*In prescribing rules and revi-*  
 9 *sions under subsection (a), the Federal financial regulatory*  
 10 *authorities shall consult with each other and with appro-*  
 11 *priate State financial regulatory authorities.*

12       (c) *CONSIDERATION OF EXISTING DISCLOSURES.*—*In*  
 13 *prescribing rules and revisions under subsection (a), the*  
 14 *Federal financial regulatory authorities shall consider the*  
 15 *sufficiency and appropriateness of then existing laws and*  
 16 *rules applicable to persons subject to their jurisdiction, and*  
 17 *may prescribe exemptions from the rules and revisions re-*  
 18 *quired by subsection (a) to the extent appropriate in light*  
 19 *of the objective of this section to increase the consistency*  
 20 *of disclosure practices.*

21       (d) *ENFORCEMENT.*—*Any rule prescribed by a Federal*  
 22 *financial regulatory authority pursuant to this section*  
 23 *shall, for purposes of enforcement, be treated as a rule pre-*  
 24 *scribed by such regulatory authority pursuant to the statute*

1 *establishing such regulatory authority’s jurisdiction over*  
 2 *the persons to whom such rule applies.*

3 (e) *DEFINITION.—As used in this section, the term*  
 4 *“Federal financial regulatory authority” means the Board*  
 5 *of Governors of the Federal Reserve System, the Securities*  
 6 *and Exchange Commission, the Comptroller of the Cur-*  
 7 *rency, the Federal Deposit Insurance Corporation, the Com-*  
 8 *modity Futures Trading Commission, and any self-regu-*  
 9 *latory organization under the supervision of any of the fore-*  
 10 *going.*

11 ***Subtitle E—Banks and Bank***  
 12 ***Holding Companies***

13 ***SEC. 251. CONSULTATION.***

14 (a) *IN GENERAL.—The Securities and Exchange Com-*  
 15 *mission shall consult and coordinate comments with the ap-*  
 16 *propriate Federal banking agency before taking any action*  
 17 *or rendering any opinion with respect to the manner in*  
 18 *which any insured depository institution or depository in-*  
 19 *stitution holding company reports loan loss reserves in its*  
 20 *financial statement, including the amount of any such loan*  
 21 *loss reserve.*

22 (b) *DEFINITIONS.—For purposes of subsection (a), the*  
 23 *terms “insured depository institution”, “depository institu-*  
 24 *tion holding company”, and “appropriate Federal banking*

1 agency” have the same meaning as in section 3 of the Fed-  
 2 eral Deposit Insurance Act.

3 **TITLE III—INSURANCE**  
 4 **Subtitle A—State Regulation of**  
 5 **Insurance**

6 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**  
 7 **ANCE.**

8 *The Act entitled “An Act to express the intent of the*  
 9 *Congress with reference to the regulation of the business of*  
 10 *insurance” and approved March 9, 1945 (15 U.S.C. 1011*  
 11 *et seq.), commonly referred to as the “McCarran-Ferguson*  
 12 *Act” remains the law of the United States.*

13 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**  
 14 **MENTS.**

15 *No person shall engage in the business of insurance*  
 16 *in a State as principal or agent unless such person is li-*  
 17 *censed as required by the appropriate insurance regulator*  
 18 *of such State in accordance with the relevant State insur-*  
 19 *ance law, subject to section 104.*

20 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

21 *The insurance activities of any person (including a*  
 22 *national bank exercising its power to act as agent under*  
 23 *the eleventh undesignated paragraph of section 13 of the*  
 24 *Federal Reserve Act) shall be functionally regulated by the*  
 25 *States, subject to section 104.*



1 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL BANKS.**

2 (a) *IN GENERAL.*—*Except as provided in section 305,*  
 3 *a national bank and the subsidiaries of a national bank*  
 4 *may not provide insurance in a State as principal except*  
 5 *that this prohibition shall not apply to authorized products.*

6 (b) *AUTHORIZED PRODUCTS.*—*For the purposes of this*  
 7 *section, a product is authorized if—*

8 (1) *as of January 1, 1999, the Comptroller of the*  
 9 *Currency had determined in writing that national*  
 10 *banks may provide such product as principal, or na-*  
 11 *tional banks were in fact lawfully providing such*  
 12 *product as principal;*

13 (2) *no court of relevant jurisdiction had, by final*  
 14 *judgment, overturned a determination of the Comp-*  
 15 *troller of the Currency that national banks may pro-*  
 16 *vide such product as principal; and*

17 (3) *the product is not title insurance, or an an-*  
 18 *nuity contract the income of which is subject to tax*  
 19 *treatment under section 72 of the Internal Revenue*  
 20 *Code of 1986.*

21 (c) *DEFINITION.*—*For purposes of this section, the*  
 22 *term “insurance” means—*

23 (1) *any product regulated as insurance as of*  
 24 *January 1, 1999, in accordance with the relevant*  
 25 *State insurance law, in the State in which the prod-*  
 26 *uct is provided;*

1           (2) *any product first offered after January 1,*  
2     *1999, which—*

3                 (A) *a State insurance regulator determines*  
4     *shall be regulated as insurance in the State in*  
5     *which the product is provided because the prod-*  
6     *uct insures, guarantees, or indemnifies against*  
7     *liability, loss of life, loss of health, or loss*  
8     *through damage to or destruction of property,*  
9     *including, but not limited to, surety bonds, life*  
10    *insurance, health insurance, title insurance, and*  
11    *property and casualty insurance (such as pri-*  
12    *vate passenger or commercial automobile, home-*  
13    *owners, mortgage, commercial multiperil, general*  
14    *liability, professional liability, workers' com-*  
15    *ensation, fire and allied lines, farm owners*  
16    *multiperil, aircraft, fidelity, surety, medical*  
17    *malpractice, ocean marine, inland marine, and*  
18    *boiler and machinery insurance); and*

19                 (B) *is not a product or service of a bank*  
20    *that is—*

21                     (i) *a deposit product;*

22                     (ii) *a loan, discount, letter of credit, or*  
23    *other extension of credit;*

24                     (iii) *a trust or other fiduciary service;*

1           (iv) a qualified financial contract (as  
2           defined in or determined pursuant to sec-  
3           tion 11(e)(8)(D)(i) of the Federal Deposit  
4           Insurance Act); or

5           (v) a financial guaranty, except that  
6           this subparagraph (B) shall not apply to a  
7           product that includes an insurance compo-  
8           nent such that if the product is offered or  
9           proposed to be offered by the bank as  
10          principal—

11               (I) it would be treated as a life  
12               insurance contract under section 7702  
13               of the Internal Revenue Code of 1986;  
14               or

15               (II) in the event that the product  
16               is not a letter of credit or other similar  
17               extension of credit, a qualified finan-  
18               cial contract, or a financial guaranty,  
19               it would qualify for treatment for  
20               losses incurred with respect to such  
21               product under section 832(b)(5) of the  
22               Internal Revenue Code of 1986, if the  
23               bank were subject to tax as an insur-  
24               ance company under section 831 of  
25               that Code; or

1           (3) *any annuity contract, the income on which*  
 2           *is subject to tax treatment under section 72 of the In-*  
 3           *ternal Revenue Code of 1986.*

4 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**  
 5 **BANKS AND THEIR AFFILIATES.**

6           (a) *GENERAL PROHIBITION.*—*No national bank, and*  
 7           *no subsidiary of a national bank, may engage in any activ-*  
 8           *ity involving the underwriting or sale of title insurance.*

9           (b) *NONDISCRIMINATION PARITY EXCEPTION.*—

10           (1) *IN GENERAL.*—*Notwithstanding any other*  
 11           *provision of law (including section 104 of this Act),*  
 12           *in the case of any State in which banks organized*  
 13           *under the laws of such State are authorized to sell*  
 14           *title insurance as agency, a national bank and a sub-*  
 15           *sidary of a national bank may sell title insurance as*  
 16           *agent in such State, but only in the same manner, to*  
 17           *the same extent, and under the same restrictions as*  
 18           *such State banks are authorized to sell title insurance*  
 19           *as agent in such State.*

20           (2) *COORDINATION WITH “WILDCARD” PROVI-*  
 21           *SION.*—*A State law which authorizes State banks to*  
 22           *engage in any activities in such State in which a na-*  
 23           *tional bank may engage shall not be treated as a stat-*  
 24           *ute which authorizes State banks to sell title insur-*  
 25           *ance as agent, for purposes of paragraph (1).*

1       (c) *GRANDFATHERING WITH CONSISTENT REGULA-*  
 2 *TION.—*

3           (1) *IN GENERAL.—Except as provided in para-*  
 4 *graphs (2) and (3) and notwithstanding subsections*  
 5 *(a) and (b), a national bank, and a subsidiary of a*  
 6 *national bank, may conduct title insurance activities*  
 7 *which such national bank or subsidiary was actively*  
 8 *and lawfully conducting before the date of the enact-*  
 9 *ment of this Act.*

10          (2) *INSURANCE AFFILIATE.—In the case of a na-*  
 11 *tional bank which has an affiliate which provides in-*  
 12 *surance as principal and is not a subsidiary of the*  
 13 *bank, the national bank and any subsidiary of the*  
 14 *national bank may not engage in the underwriting of*  
 15 *title insurance pursuant to paragraph (1).*

16          (3) *INSURANCE SUBSIDIARY.—In the case of a*  
 17 *national bank which has a subsidiary which provides*  
 18 *insurance as principal and has no affiliate other than*  
 19 *a subsidiary which provides insurance as principal,*  
 20 *the national bank may not directly engage in any ac-*  
 21 *tivity involving the underwriting of title insurance.*

22          (d) *“AFFILIATE” AND “SUBSIDIARY” DEFINED.—For*  
 23 *purposes of this section, the terms “affiliate” and “sub-*  
 24 *sidary” have the same meanings as in section 2 of the*  
 25 *Bank Holding Company Act of 1956.*

1       (e) *RULE OF CONSTRUCTION.*—No provision of this  
 2 Act or any other Federal law shall be construed as super-  
 3 seding or affecting a State law which was in effect before  
 4 the date of the enactment of this Act and which prohibits  
 5 title insurance from being offered, provided, or sold in such  
 6 State, or from being underwritten with respect to real prop-  
 7 erty in such State, by any person whatsoever.

8       **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**  
 9                               **TION FOR FEDERAL REGULATORS.**

10       (a) *FILING IN COURT OF APPEALS.*—In the case of a  
 11 regulatory conflict between a State insurance regulator and  
 12 a Federal regulator as to whether any product is or is not  
 13 insurance, as defined in section 304(c) of this Act, or wheth-  
 14 er a State statute, regulation, order, or interpretation re-  
 15 garding any insurance sales or solicitation activity is prop-  
 16 erly treated as preempted under Federal law, either regu-  
 17 lator may seek expedited judicial review of such determina-  
 18 tion by the United States Court of Appeals for the circuit  
 19 in which the State is located or in the United States Court  
 20 of Appeals for the District of Columbia Circuit by filing  
 21 a petition for review in such court.

22       (b) *EXPEDITED REVIEW.*—The United States Court of  
 23 Appeals in which a petition for review is filed in accord-  
 24 ance with subsection (a) shall complete all action on such  
 25 petition, including rendering a judgment, before the end of

1 *the 60-day period beginning on the date on which such peti-*  
 2 *tion is filed, unless all parties to such proceeding agree to*  
 3 *any extension of such period.*

4 (c) *SUPREME COURT REVIEW.*—*Any request for certio-*  
 5 *rari to the Supreme Court of the United States of any judg-*  
 6 *ment of a United States Court of Appeals with respect to*  
 7 *a petition for review under this section shall be filed with*  
 8 *the Supreme Court of the United States as soon as prac-*  
 9 *ticable after such judgment is issued.*

10 (d) *STATUTE OF LIMITATION.*—*No petition may be*  
 11 *filed under this section challenging an order, ruling, deter-*  
 12 *mination, or other action of a Federal regulator or State*  
 13 *insurance regulator after the later of—*

14 (1) *the end of the 12-month period beginning on*  
 15 *the date on which the first public notice is made of*  
 16 *such order, ruling, determination or other action in*  
 17 *its final form; or*

18 (2) *the end of the 6-month period beginning on*  
 19 *the date on which such order, ruling, determination,*  
 20 *or other action takes effect.*

21 (e) *STANDARD OF REVIEW.*—*The court shall decide a*  
 22 *petition filed under this section based on its review on the*  
 23 *merits of all questions presented under State and Federal*  
 24 *law, including the nature of the product or activity and*

1 *the history and purpose of its regulation under State and*  
 2 *Federal law, without unequal deference.*

3 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

4 *The Federal Deposit Insurance Act (12 U.S.C. 1811*  
 5 *et seq.) is amended by inserting after section 46 (as added*  
 6 *by section 122(b) of this Act) the following new section:*

7 **“SEC. 47. CONSUMER PROTECTION REGULATIONS.**

8 **“(a) REGULATIONS REQUIRED.—**

9 **“(1) IN GENERAL.—***The Federal banking agen-*  
 10 *cies shall prescribe and publish in final form, before*  
 11 *the end of the 1-year period beginning on the date of*  
 12 *the enactment of the Financial Services Act of 1999,*  
 13 *consumer protection regulations (which the agencies*  
 14 *jointly determine to be appropriate) that—*

15 **“(A) apply to retail sales practices, solicita-**  
 16 **tions, advertising, or offers of any insurance**  
 17 **product by any insured depository institution or**  
 18 **wholesale financial institution or any person**  
 19 **who is engaged in such activities at an office of**  
 20 **the institution or on behalf of the institution;**  
 21 **and**

22 **“(B) are consistent with the requirements of**  
 23 **this Act and provide such additional protections**  
 24 **for consumers to whom such sales, solicitations,**



1           *advertising, or offers are directed as the agency*  
 2           *determines to be appropriate.*

3           “(2) *APPLICABILITY TO SUBSIDIARIES.*—*The reg-*  
 4           *ulations prescribed pursuant to paragraph (1) shall*  
 5           *extend such protections to any subsidiaries of an in-*  
 6           *sured depository institution, as deemed appropriate*  
 7           *by the regulators referred to in paragraph (3), where*  
 8           *such extension is determined to be necessary to ensure*  
 9           *the consumer protections provided by this section.*

10          “(3) *CONSULTATION AND JOINT REGULATIONS.*—  
 11          *The Federal banking agencies shall consult with each*  
 12          *other and prescribe joint regulations pursuant to*  
 13          *paragraph (1), after consultation with the State in-*  
 14          *sureance regulators, as appropriate.*

15          “(b) *SALES PRACTICES.*—*The regulations prescribed*  
 16          *pursuant to subsection (a) shall include anticoercion rules*  
 17          *applicable to the sale of insurance products which prohibit*  
 18          *an insured depository institution from engaging in any*  
 19          *practice that would lead a consumer to believe an extension*  
 20          *of credit, in violation of section 106(b) of the Bank Holding*  
 21          *Company Act Amendments of 1970, is conditional upon—*

22               “(1) *the purchase of an insurance product from*  
 23               *the institution or any of its affiliates; or*

24               “(2) *an agreement by the consumer not to ob-*  
 25               *tain, or a prohibition on the consumer from obtain-*

1        *ing, an insurance product from an unaffiliated enti-*  
 2        *ty.*

3        “(c) *DISCLOSURES AND ADVERTISING.*—*The regula-*  
 4        *tions prescribed pursuant to subsection (a) shall include the*  
 5        *following provisions relating to disclosures and advertising*  
 6        *in connection with the initial purchase of an insurance*  
 7        *product:*

8                “(1) *DISCLOSURES.*—

9                        “(A) *IN GENERAL.*—*Requirements that the*  
 10                      *following disclosures be made orally and in writ-*  
 11                      *ing before the completion of the initial sale and,*  
 12                      *in the case of clause (iii), at the time of applica-*  
 13                      *tion for an extension of credit:*

14                                “(i) *UNINSURED STATUS.*—*As appro-*  
 15                              *priate, the product is not insured by the*  
 16                              *Federal Deposit Insurance Corporation, the*  
 17                              *United States Government, or the insured*  
 18                              *depository institution.*

19                                “(ii) *INVESTMENT RISK.*—*In the case*  
 20                              *of a variable annuity or other insurance*  
 21                              *product which involves an investment risk,*  
 22                              *that there is an investment risk associated*  
 23                              *with the product, including possible loss of*  
 24                              *value.*

1                   “(iii) *COERCION*.—*The approval of an*  
 2                   *extension of credit may not be conditioned*  
 3                   *on—*

4                   “(I) *the purchase of an insurance*  
 5                   *product from the institution in which*  
 6                   *the application for credit is pending or*  
 7                   *any of its affiliates or subsidiaries; or*

8                   “(II) *an agreement by the con-*  
 9                   *sumer not to obtain, or a prohibition*  
 10                  *on the consumer from obtaining, an*  
 11                  *insurance product from an unaffiliated*  
 12                  *entity.*

13                  “(B) *MAKING DISCLOSURE READILY UNDER-*  
 14                  *STANDABLE*.—*Regulations prescribed under sub-*  
 15                  *paragraph (A) shall encourage the use of disclo-*  
 16                  *sure that is conspicuous, simple, direct, and*  
 17                  *readily understandable, such as the following:*

18                  “(i) *‘NOT FDIC—INSURED’.*

19                  “(ii) *‘NOT GUARANTEED BY THE*  
 20                  *BANK’.*

21                  “(iii) *‘MAY GO DOWN IN VALUE’.*

22                  “(iv) *‘NOT INSURED BY ANY GOV-*  
 23                  *ERNMENT AGENCY’.*

24                  “(C) *ADJUSTMENTS FOR ALTERNATIVE*  
 25                  *METHODS OF PURCHASE*.—*In prescribing the re-*

1        *quirements under subparagraphs (A) and (D),*  
 2        *necessary adjustments shall be made for purchase*  
 3        *in person, by telephone, or by electronic media to*  
 4        *provide for the most appropriate and complete*  
 5        *form of disclosure and acknowledgments.*

6                “(D) CONSUMER ACKNOWLEDGMENT.—A re-  
 7        *quirement that an insured depository institution*  
 8        *shall require any person selling an insurance*  
 9        *product at any office of, or on behalf of, the in-*  
 10        *stitution to obtain, at the time a consumer re-*  
 11        *ceives the disclosures required under this para-*  
 12        *graph or at the time of the initial purchase by*  
 13        *the consumer of such product, an acknowledg-*  
 14        *ment by such consumer of the receipt of the dis-*  
 15        *closure required under this subsection with re-*  
 16        *spect to such product.*

17                “(2) PROHIBITION ON MISREPRESENTATIONS.—A  
 18        *prohibition on any practice, or any advertising, at*  
 19        *any office of, or on behalf of, the insured depository*  
 20        *institution, or any subsidiary as appropriate, which*  
 21        *could mislead any person or otherwise cause a reason-*  
 22        *able person to reach an erroneous belief with respect*  
 23        *to—*

1           “(A) *the uninsured nature of any insurance*  
 2           *product sold, or offered for sale, by the institu-*  
 3           *tion or any subsidiary of the institution;*

4           “(B) *in the case of a variable annuity or*  
 5           *other insurance product that involves an invest-*  
 6           *ment risk, the investment risk associated with*  
 7           *any such product; or*

8           “(C) *in the case of an institution or sub-*  
 9           *sidary at which insurance products are sold or*  
 10          *offered for sale, the fact that—*

11           “(i) *the approval of an extension of*  
 12           *credit to a customer by the institution or*  
 13           *subsidiary may not be conditioned on the*  
 14           *purchase of an insurance product by such*  
 15           *customer from the institution or subsidiary;*  
 16           *and*

17           “(ii) *the customer is free to purchase*  
 18           *the insurance product from another*  
 19           *source.”.*

20          “(d) *SEPARATION OF BANKING AND NONBANKING AC-*  
 21          *TIVITIES.—*

22           “(1) *REGULATIONS REQUIRED.—The regulations*  
 23           *prescribed pursuant to subsection (a) shall include*  
 24           *such provisions as the Federal banking agencies con-*  
 25           *sider appropriate to ensure that the routine accept-*

1        *ance of deposits is kept, to the extent practicable,*  
2        *physically segregated from insurance product activity.*

3            “(2) *REQUIREMENTS.—Regulations prescribed*  
4        *pursuant to paragraph (1) shall include the following:*

5            “(A) *SEPARATE SETTING.—A clear delineation*  
6        *of the setting in which, and the circumstances under which,*  
7        *transactions involving insurance products should be conducted in a lo-*  
8        *cation physically segregated from an area where*  
9        *retail deposits are routinely accepted.*

11           “(B) *REFERRALS.—Standards which permit*  
12        *any person accepting deposits from the public in an area where*  
13        *such transactions are routinely conducted in an insured depository insti-*  
14        *tution to refer a customer who seeks to purchase*  
15        *any insurance product to a qualified person who*  
16        *sells such product, only if the person making the*  
17        *referral receives no more than a one-time nominal fee of a fixed dollar*  
18        *amount for each referral that does not depend on whether the referral re-*  
19        *sults in a transaction.*

22           “(C) *QUALIFICATION AND LICENSING RE-*  
23        *QUIREMENTS.—Standards prohibiting any insured depository institution*  
24        *from permitting any person to sell or offer for sale any insurance*  
25

1           *product in any part of any office of the institu-*  
 2           *tion, or on behalf of the institution, unless such*  
 3           *person is appropriately qualified and licensed.*

4           “(e) *DOMESTIC VIOLENCE DISCRIMINATION PROHIBI-*  
 5           *TION.*—

6           “(1) *IN GENERAL.*—*In the case of an applicant*  
 7           *for, or an insured under, any insurance product de-*  
 8           *scribed in paragraph (2), the status of the applicant*  
 9           *or insured as a victim of domestic violence, or as a*  
 10          *provider of services to victims of domestic violence,*  
 11          *shall not be considered as a criterion in any decision*  
 12          *with regard to insurance underwriting, pricing, re-*  
 13          *newal, or scope of coverage of insurance policies, or*  
 14          *payment of insurance claims, except as required or*  
 15          *expressly permitted under State law.*

16          “(2) *SCOPE OF APPLICATION.*—*The prohibition*  
 17          *contained in paragraph (1) shall apply to any insur-*  
 18          *ance product which is sold or offered for sale, as prin-*  
 19          *cipal, agent, or broker, by any insured depository in-*  
 20          *stitution or wholesale financial institution or any*  
 21          *person who is engaged in such activities at an office*  
 22          *of the institution or on behalf of the institution.*

23          “(3) *SENSE OF THE CONGRESS.*—*It is the sense*  
 24          *of the Congress that, by the end of the 30-month pe-*  
 25          *riod beginning on the date of the enactment of this*

1     *Act, the States should enact prohibitions against dis-*  
2     *crimination with respect to insurance products that*  
3     *are at least as strict as the prohibitions contained in*  
4     *paragraph (1).*

5             “(4) *DOMESTIC VIOLENCE DEFINED.*—*For pur-*  
6     *poses of this subsection, the term ‘domestic violence’*  
7     *means the occurrence of one or more of the following*  
8     *acts by a current or former family member, household*  
9     *member, intimate partner, or caretaker:*

10            “(A) *Attempting to cause or causing or*  
11     *threatening another person physical harm, severe*  
12     *emotional distress, psychological trauma, rape,*  
13     *or sexual assault.*

14            “(B) *Engaging in a course of conduct or re-*  
15     *peatedly committing acts toward another person,*  
16     *including following the person without proper*  
17     *authority, under circumstances that place the*  
18     *person in reasonable fear of bodily injury or*  
19     *physical harm.*

20            “(C) *Subjecting another person to false im-*  
21     *prisonment.*

22            “(D) *Attempting to cause or cause damage*  
23     *to property so as to intimidate or attempt to*  
24     *control the behavior of another person.*



1       “(f) *CONSUMER GRIEVANCE PROCESS.*—*The Federal*  
 2 *banking agencies shall jointly establish a consumer com-*  
 3 *plaint mechanism, for receiving and expeditiously address-*  
 4 *ing consumer complaints alleging a violation of regulations*  
 5 *issued under the section, which shall—*

6               “(1) *establish a group within each regulatory*  
 7 *agency to receive such complaints;*

8               “(2) *develop procedures for investigating such*  
 9 *complaints;*

10              “(3) *develop procedures for informing consumers*  
 11 *of rights they may have in connection with such com-*  
 12 *plaints; and*

13              “(4) *develop procedures for addressing concerns*  
 14 *raised by such complaints, as appropriate, including*  
 15 *procedures for the recovery of losses to the extent ap-*  
 16 *propriate.*

17       “(g) *EFFECT ON OTHER AUTHORITY.*—

18              “(1) *IN GENERAL.*—*No provision of this section*  
 19 *shall be construed as granting, limiting, or otherwise*  
 20 *affecting—*

21                   “(A) *any authority of the Securities and*  
 22 *Exchange Commission, any self-regulatory orga-*  
 23 *nization, the Municipal Securities Rulemaking*  
 24 *Board, or the Secretary of the Treasury under*  
 25 *any Federal securities law; or*

1           “(B) *except as provided in paragraph (2),*  
 2           *any authority of any State insurance commis-*  
 3           *sioner or other State authority under any State*  
 4           *law.*

5           “(2) *COORDINATION WITH STATE LAW.—*

6           “(A) *IN GENERAL.—Except as provided in*  
 7           *subparagraph (B), regulations prescribed by a*  
 8           *Federal banking agency under this section shall*  
 9           *not apply to retail sales, solicitations, adver-*  
 10           *tising, or offers of any insurance product by any*  
 11           *insured depository institution or wholesale fi-*  
 12           *nancial institution or to any person who is en-*  
 13           *gaged in such activities at an office of such insti-*  
 14           *tution or on behalf of the institution, in a State*  
 15           *where the State has in effect statutes, regulations,*  
 16           *orders, or interpretations, that are inconsistent*  
 17           *with or contrary to the regulations prescribed by*  
 18           *the Federal banking agencies.*

19           “(B) *PREEMPTION.—If, with respect to any*  
 20           *provision of the regulations prescribed under this*  
 21           *section, the Board of Governors of the Federal*  
 22           *Reserve System, the Comptroller of the Currency,*  
 23           *and the Board of Directors of the Federal De-*  
 24           *posit Insurance Corporation determine jointly*  
 25           *that the protection afforded by such provision for*

1       consumers is greater than the protection pro-  
 2       vided by a comparable provision of the statutes,  
 3       regulations, orders, or interpretations referred to  
 4       in subparagraph (A) of any State, such provi-  
 5       sion of the regulations prescribed under this sec-  
 6       tion shall supersede the comparable provision of  
 7       such State statute, regulation, order, or interpre-  
 8       tation.

9       “(h) *INSURANCE PRODUCT DEFINED.*—For purposes  
 10      of this section, the term ‘insurance product’ includes an an-  
 11      nuity contract the income of which is subject to tax treat-  
 12      ment under section 72 of the Internal Revenue Code of  
 13      1986.”.

14   **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**  
 15                   **FOR INSURANCE COMPANIES AND AFFILI-**  
 16                   **ATES.**

17       *Except as provided in section 104(a)(2), no State may,*  
 18      *by law, regulation, order, interpretation, or otherwise—*

19           (1) *prevent or significantly interfere with the*  
 20      *ability of any insurer, or any affiliate of an insurer*  
 21      *(whether such affiliate is organized as a stock com-*  
 22      *pany, mutual holding company, or otherwise), to be-*  
 23      *come a financial holding company or to acquire con-*  
 24      *trol of an insured depository institution;*

1           (2) *limit the amount of an insurer's assets that*  
 2           *may be invested in the voting securities of an insured*  
 3           *depository institution (or any company which con-*  
 4           *trols such institution), except that the laws of an in-*  
 5           *surer's State of domicile may limit the amount of*  
 6           *such investment to an amount that is not less than*  
 7           *5 percent of the insurer's admitted assets; or*

8           (3) *prevent, significantly interfere with, or have*  
 9           *the authority to review, approve, or disapprove a*  
 10          *plan of reorganization by which an insurer proposes*  
 11          *to reorganize from mutual form to become a stock in-*  
 12          *surer (whether as a direct or indirect subsidiary of a*  
 13          *mutual holding company or otherwise) unless such*  
 14          *State is the State of domicile of the insurer.*

15 **SEC. 309. INTERAGENCY CONSULTATION.**

16          (a) *PURPOSE.*—*It is the intention of the Congress that*  
 17          *the Board of Governors of the Federal Reserve System, as*  
 18          *the umbrella supervisor for financial holding companies,*  
 19          *and the State insurance regulators, as the functional regu-*  
 20          *lators of companies engaged in insurance activities, coordi-*  
 21          *nate efforts to supervise companies that control both a de-*  
 22          *pository institution and a company engaged in insurance*  
 23          *activities regulated under State law. In particular, Con-*  
 24          *gress believes that the Board and the State insurance regu-*  
 25          *lators should share, on a confidential basis, information rel-*

1 *evant to the supervision of companies that control both a*  
 2 *depository institution and a company engaged in insurance*  
 3 *activities, including information regarding the financial*  
 4 *health of the consolidated organization and information re-*  
 5 *garding transactions and relationships between insurance*  
 6 *companies and affiliated depository institutions. The ap-*  
 7 *propriate Federal banking agencies for depository institu-*  
 8 *tions should also share, on a confidential basis, information*  
 9 *with the relevant State insurance regulators regarding*  
 10 *transactions and relationships between depository institu-*  
 11 *tions and affiliated companies engaged in insurance activi-*  
 12 *ties. The purpose of this section is to encourage this coordi-*  
 13 *nation and confidential sharing of information, and to*  
 14 *thereby improve both the efficiency and the quality of the*  
 15 *supervision of financial holding companies and their affili-*  
 16 *ated depository institutions and companies engaged in in-*  
 17 *surance activities.*

18       (b) *EXAMINATION RESULTS AND OTHER INFORMA-*  
 19 *TION.—*

20               (1) *INFORMATION OF THE BOARD.—Upon the re-*  
 21 *quest of the appropriate insurance regulator of any*  
 22 *State, the Board may provide any information of the*  
 23 *Board regarding the financial condition, risk man-*  
 24 *agement policies, and operations of any financial*  
 25 *holding company that controls a company that is en-*

1      *gaged in insurance activities and is regulated by such*  
2      *State insurance regulator, and regarding any trans-*  
3      *action or relationship between such an insurance*  
4      *company and any affiliated depository institution.*  
5      *The Board may provide any other information to the*  
6      *appropriate State insurance regulator that the Board*  
7      *believes is necessary or appropriate to permit the*  
8      *State insurance regulator to administer and enforce*  
9      *applicable State insurance laws.*

10            (2) *BANKING AGENCY INFORMATION.*—*Upon the*  
11      *request of the appropriate insurance regulator of any*  
12      *State, the appropriate Federal banking agency may*  
13      *provide any information of the agency regarding any*  
14      *transaction or relationship between a depository in-*  
15      *stitution supervised by such Federal banking agency*  
16      *and any affiliated company that is engaged in insur-*  
17      *ance activities regulated by such State insurance reg-*  
18      *ulator. The appropriate Federal banking agency may*  
19      *provide any other information to the appropriate*  
20      *State insurance regulator that the agency believes is*  
21      *necessary or appropriate to permit the State insur-*  
22      *ance regulator to administer and enforce applicable*  
23      *State insurance laws.*

24            (3) *STATE INSURANCE REGULATOR INFORMA-*  
25      *TION.*—*Upon the request of the Board or the appro-*

1        *priate Federal banking agency, a State insurance reg-*  
2        *ulator may provide any examination or other reports,*  
3        *records, or other information to which such insurance*  
4        *regulator may have access with respect to a company*  
5        *which—*

6                *(A) is engaged in insurance activities and*  
7                *regulated by such insurance regulator; and*

8                *(B) is an affiliate of an insured depository*  
9                *institution, wholesale financial institution, or fi-*  
10               *nanacial holding company.*

11        *(c) CONSULTATION.—Before making any determina-*  
12        *tion relating to the initial affiliation of, or the continuing*  
13        *affiliation of, an insured depository institution, wholesale*  
14        *financial institution, or financial holding company with*  
15        *a company engaged in insurance activities, the appropriate*  
16        *Federal banking agency shall consult with the appropriate*  
17        *State insurance regulator of such company and take the*  
18        *views of such insurance regulator into account in making*  
19        *such determination.*

20        *(d) EFFECT ON OTHER AUTHORITY.—Nothing in this*  
21        *section shall limit in any respect the authority of the appro-*  
22        *priate Federal banking agency with respect to an insured*  
23        *depository institution, wholesale financial institution, or*  
24        *bank holding company or any affiliate thereof under any*  
25        *provision of law.*

1       (e) *CONFIDENTIALITY AND PRIVILEGE.*—

2               (1) *CONFIDENTIALITY.*—*The appropriate Federal*  
3       *banking agency shall not provide any information or*  
4       *material that is entitled to confidential treatment*  
5       *under applicable Federal banking agency regulations,*  
6       *or other applicable law, to a State insurance regu-*  
7       *lator unless such regulator agrees to maintain the in-*  
8       *formation or material in confidence and to take all*  
9       *reasonable steps to oppose any effort to secure disclo-*  
10       *sure of the information or material by the regulator.*  
11       *The appropriate Federal banking agency shall treat*  
12       *as confidential any information or material obtained*  
13       *from a State insurance regulator that is entitled to*  
14       *confidential treatment under applicable State regula-*  
15       *tions, or other applicable law, and take all reasonable*  
16       *steps to oppose any effort to secure disclosure of the*  
17       *information or material by the Federal banking agen-*  
18       *cy.*

19               (2) *PRIVILEGE.*—*The provision pursuant to this*  
20       *section of information or material by a Federal bank-*  
21       *ing agency or State insurance regulator shall not con-*  
22       *stitute a waiver of, or otherwise affect, any privilege*  
23       *to which the information or material is otherwise sub-*  
24       *ject.*



1       (f) *DEFINITIONS.*—For purposes of this section, the fol-  
 2       lowing definitions shall apply:

3               (1) *APPROPRIATE FEDERAL BANKING AGENCY;*  
 4       *INSURED DEPOSITORY INSTITUTION.*—The terms “ap-  
 5       propriate Federal banking agency” and “insured de-  
 6       pository institution” have the same meanings as in  
 7       section 3 of the *Federal Deposit Insurance Act*.

8               (2) *BOARD; FINANCIAL HOLDING COMPANY; AND*  
 9       *WHOLESALE FINANCIAL INSTITUTION.*—The terms  
 10      “Board”, “financial holding company”, and “whole-  
 11      sale financial institution” have the same meanings as  
 12      in section 2 of the *Bank Holding Company Act of*  
 13      1956.

14   **SEC. 310. DEFINITION OF STATE.**

15      For purposes of this subtitle, the term “State” means  
 16      any State of the United States, the District of Columbia,  
 17      any territory of the United States, Puerto Rico, Guam,  
 18      American Samoa, the Trust Territory of the Pacific Is-  
 19      lands, the Virgin Islands, and the Northern Mariana Is-  
 20      lands.

21           ***Subtitle B—Redomestication of***  
 22           ***Mutual Insurers***

23   **SEC. 311. GENERAL APPLICATION.**

24      This subtitle shall only apply to a mutual insurance  
 25      company in a State which has not enacted a law which

1 *expressly establishes reasonable terms and conditions for a*  
 2 *mutual insurance company domiciled in such State to reor-*  
 3 *ganize into a mutual holding company.*

4 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

5       (a) *REDOMESTICATION.*—A mutual insurer organized  
 6 under the laws of any State may transfer its domicile to  
 7 a transferee domicile as a step in a reorganization in  
 8 which, pursuant to the laws of the transferee domicile and  
 9 consistent with the standards in subsection (f), the mutual  
 10 insurer becomes a stock insurer that is a direct or indirect  
 11 subsidiary of a mutual holding company.

12       (b) *RESULTING DOMICILE.*—Upon complying with the  
 13 applicable law of the transferee domicile governing transfers  
 14 of domicile and completion of a transfer pursuant to this  
 15 section, the mutual insurer shall cease to be a domestic in-  
 16 surer in the transferor domicile and, as a continuation of  
 17 its corporate existence, shall be a domestic insurer of the  
 18 transferee domicile.

19       (c) *LICENSES PRESERVED.*—The certificate of author-  
 20 ity, agents' appointments and licenses, rates, approvals and  
 21 other items that a licensed State allows and that are in  
 22 existence immediately prior to the date that a redomes-  
 23 ticating insurer transfers its domicile pursuant to this sub-  
 24 title shall continue in full force and effect upon transfer,

1 *if the insurer remains duly qualified to transact the busi-*  
 2 *ness of insurance in such licensed State.*

3 (d) *EFFECTIVENESS OF OUTSTANDING POLICIES AND*  
 4 *CONTRACTS.—*

5 (1) *IN GENERAL.—All outstanding insurance*  
 6 *policies and annuities contracts of a redomesticating*  
 7 *insurer shall remain in full force and effect and need*  
 8 *not be endorsed as to the new domicile of the insurer,*  
 9 *unless so ordered by the State insurance regulator of*  
 10 *a licensed State, and then only in the case of out-*  
 11 *standing policies and contracts whose owners reside*  
 12 *in such licensed State.*

13 (2) *FORMS.—*

14 (A) *Applicable State law may require a re-*  
 15 *domesticating insurer to file new policy forms*  
 16 *with the State insurance regulator of a licensed*  
 17 *State on or before the effective date of the trans-*  
 18 *fer.*

19 (B) *Notwithstanding subparagraph (A), a*  
 20 *redomesticating insurer may use existing policy*  
 21 *forms with appropriate endorsements to reflect*  
 22 *the new domicile of the redomesticating insurer*  
 23 *until the new policy forms are approved for use*  
 24 *by the State insurance regulator of such licensed*  
 25 *State.*

1       (e) *NOTICE.*—A redomesticating insurer shall give no-  
 2       tice of the proposed transfer to the State insurance regulator  
 3       of each licensed State and shall file promptly any resulting  
 4       amendments to corporate documents required to be filed by  
 5       a foreign licensed mutual insurer with the insurance regu-  
 6       lator of each such licensed State.

7       (f) *PROCEDURAL REQUIREMENTS.*—No mutual in-  
 8       surer may redomesticate to another State and reorganize  
 9       into a mutual holding company pursuant to this section  
 10      unless the State insurance regulator of the transferee domi-  
 11      cile determines that the plan of reorganization of the in-  
 12      surer includes the following requirements:

13           (1) *APPROVAL BY BOARD OF DIRECTORS AND*  
 14      *POLICYHOLDERS.*—The reorganization is approved by  
 15      at least a majority of the board of directors of the mu-  
 16      tual insurer and at least a majority of the policy-  
 17      holders who vote after notice, disclosure of the reorga-  
 18      nization and the effects of the transaction on policy-  
 19      holder contractual rights, and reasonable opportunity  
 20      to vote, in accordance with such notice, disclosure,  
 21      and voting procedures as are approved by the State  
 22      insurance regulator of the transferee domicile.

23           (2) *CONTINUED VOTING CONTROL BY POLICY-*  
 24      *HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.*—  
 25      After the consummation of a reorganization, the pol-

1      *icyholders of the reorganized insurer shall have the*  
 2      *same voting rights with respect to the mutual holding*  
 3      *company as they had before the reorganization with*  
 4      *respect to the mutual insurer. With respect to an ini-*  
 5      *tial public offering of stock, the offering shall be con-*  
 6      *ducted in compliance with applicable securities laws*  
 7      *and in a manner approved by the State insurance*  
 8      *regulator of the transferee domicile.*

9            (3) *AWARD OF STOCK OR GRANT OF OPTIONS TO*  
 10      *OFFICERS AND DIRECTORS.—For a period of 6*  
 11      *months after completion of an initial public offering,*  
 12      *neither a stock holding company nor the converted in-*  
 13      *surer shall award any stock options or stock grants*  
 14      *to persons who are elected officers or directors of the*  
 15      *mutual holding company, the stock holding company,*  
 16      *or the converted insurer, except with respect to any*  
 17      *such awards or options to which a person is entitled*  
 18      *as a policyholder and as approved by the State insur-*  
 19      *ance regulator of the transferee domicile.*

20            (4) *CONTRACTUAL RIGHTS.—Upon reorganiza-*  
 21      *tion into a mutual holding company, the contractual*  
 22      *rights of the policyholders are preserved.*

23            (5) *FAIR AND EQUITABLE TREATMENT OF POL-*  
 24      *ICYHOLDERS.—The reorganization is approved as fair*

1        *and equitable to the policyholders by the insurance*  
 2        *regulator of the transferee domicile.*

3    **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**  
 4        **TICATION.**

5        *(a) IN GENERAL.—Unless otherwise permitted by this*  
 6        *subtitle, State laws of any transferor domicile that conflict*  
 7        *with the purposes and intent of this subtitle are preempted,*  
 8        *including but not limited to—*

9            *(1) any law that has the purpose or effect of im-*  
 10        *peding the activities of, taking any action against, or*  
 11        *applying any provision of law or regulation to, any*  
 12        *insurer or an affiliate of such insurer because that in-*  
 13        *surer or any affiliate plans to redomesticate, or has*  
 14        *redomesticated, pursuant to this subtitle;*

15           *(2) any law that has the purpose or effect of im-*  
 16        *peding the activities of, taking action against, or ap-*  
 17        *plying any provision of law or regulation to, any in-*  
 18        *sured or any insurance licensee or other intermediary*  
 19        *because such person has procured insurance from or*  
 20        *placed insurance with any insurer or affiliate of such*  
 21        *insurer that plans to redomesticate, or has redomes-*  
 22        *ticated, pursuant to this subtitle, but only to the ex-*  
 23        *tent that such law would treat such insured licensee*  
 24        *or other intermediary differently than if the person*  
 25        *procured insurance from, or placed insurance with,*

1        *an insured licensee or other intermediary which had*  
 2        *not redomesticated;*

3            *(3) any law that has the purpose or effect of ter-*  
 4        *minating, because of the redomestication of a mutual*  
 5        *insurer pursuant to this subtitle, any certificate of*  
 6        *authority, agent appointment or license, rate ap-*  
 7        *proval, or other approval, of any State insurance reg-*  
 8        *ulator or other State authority in existence imme-*  
 9        *diately prior to the redomestication in any State*  
 10       *other than the transferee domicile.*

11       *(b) DIFFERENTIAL TREATMENT PROHIBITED.—No*  
 12       *State law, regulation, interpretation, or functional equiva-*  
 13       *lent thereof, of a State other than a transferee domicile may*  
 14       *treat a redomesticating or redomesticated insurer or any*  
 15       *affiliate thereof any differently than an insurer operating*  
 16       *in that State that is not a redomesticating or redomes-*  
 17       *ticated insurer.*

18       *(c) LAWS PROHIBITING OPERATIONS.—If any licensed*  
 19       *State fails to issue, delays the issuance of, or seeks to revoke*  
 20       *an original or renewal certificate of authority of a redomes-*  
 21       *ticated insurer immediately following redomestication, ex-*  
 22       *cept on grounds and in a manner consistent with its past*  
 23       *practices regarding the issuance of certificates of authority*  
 24       *to foreign insurers that are not redomesticating, then the*  
 25       *redomesticating insurer shall be exempt from any State law*

1 *of the licensed State to the extent that such State law or*  
 2 *the operation of such State law would make unlawful, or*  
 3 *regulate, directly or indirectly, the operation of the redomes-*  
 4 *ticated insurer, except that such licensed State may require*  
 5 *the redomesticated insurer to—*

6           (1) *comply with the unfair claim settlement*  
 7 *practices law of the licensed State;*

8           (2) *pay, on a nondiscriminatory basis, applica-*  
 9 *ble premium and other taxes which are levied on li-*  
 10 *icensed insurers or policyholders under the laws of the*  
 11 *licensed State;*

12           (3) *register with and designate the State insur-*  
 13 *ance regulator as its agent solely for the purpose of*  
 14 *receiving service of legal documents or process;*

15           (4) *submit to an examination by the State insur-*  
 16 *ance regulator in any licensed state in which the re-*  
 17 *domesticated insurer is doing business to determine*  
 18 *the insurer's financial condition, if—*

19           (A) *the State insurance regulator of the*  
 20 *transferee domicile has not begun an examina-*  
 21 *tion of the redomesticated insurer and has not*  
 22 *scheduled such an examination to begin before*  
 23 *the end of the 1-year period beginning on the*  
 24 *date of the redomestication; and*



1           (B) any such examination is coordinated to  
2           avoid unjustified duplication and repetition;

3           (5) comply with a lawful order issued in—

4           (A) a delinquency proceeding commenced by  
5           the State insurance regulator of any licensed  
6           State if there has been a judicial finding of fi-  
7           nancial impairment under paragraph (7); or

8           (B) a voluntary dissolution proceeding;

9           (6) comply with any State law regarding decep-  
10          tive, false, or fraudulent acts or practices, except that  
11          if the licensed State seeks an injunction regarding the  
12          conduct described in this paragraph, such injunction  
13          must be obtained from a court of competent jurisdic-  
14          tion as provided in section 314(a);

15          (7) comply with an injunction issued by a court  
16          of competent jurisdiction, upon a petition by the  
17          State insurance regulator alleging that the redomes-  
18          ticating insurer is in hazardous financial condition  
19          or is financially impaired;

20          (8) participate in any insurance insolvency  
21          guaranty association on the same basis as any other  
22          insurer licensed in the licensed State; and

23          (9) require a person acting, or offering to act, as  
24          an insurance licensee for a redomesticated insurer in  
25          the licensed State to obtain a license from that State,

1       *except that such State may not impose any qualifica-*  
 2       *tion or requirement that discriminates against a non-*  
 3       *resident insurance licensee.*

4   **SEC. 314. OTHER PROVISIONS.**

5       (a) *JUDICIAL REVIEW.*—*The appropriate United*  
 6       *States district court shall have exclusive jurisdiction over*  
 7       *litigation arising under this section involving any redomes-*  
 8       *ticating or redomesticated insurer.*

9       (b) *SEVERABILITY.*—*If any provision of this section,*  
 10      *or the application thereof to any person or circumstances,*  
 11      *is held invalid, the remainder of the section, and the appli-*  
 12      *cation of such provision to other persons or circumstances,*  
 13      *shall not be affected thereby.*

14   **SEC. 315. DEFINITIONS.**

15      *For purposes of this subtitle, the following definitions*  
 16      *shall apply:*

17           (1) *COURT OF COMPETENT JURISDICTION.*—*The*  
 18           *term “court of competent jurisdiction” means a court*  
 19           *authorized pursuant to section 314(a) to adjudicate*  
 20           *litigation arising under this subtitle.*

21           (2) *DOMICILE.*—*The term “domicile” means the*  
 22           *State in which an insurer is incorporated, chartered,*  
 23           *or organized.*

24           (3) *INSURANCE LICENSEE.*—*The term “insurance*  
 25           *licensee” means any person holding a license under*

1     *State law to act as insurance agent, subagent, broker,*  
2     *or consultant.*

3           (4) *INSTITUTION.*—*The term “institution” means*  
4     *a corporation, joint stock company, limited liability*  
5     *company, limited liability partnership, association,*  
6     *trust, partnership, or any similar entity.*

7           (5) *LICENSED STATE.*—*The term “licensed*  
8     *State” means any State, the District of Columbia,*  
9     *American Samoa, Guam, Puerto Rico, or the United*  
10    *States Virgin Islands in which the redomesticating*  
11    *insurer has a certificate of authority in effect imme-*  
12    *diately prior to the redomestication.*

13          (6) *MUTUAL INSURER.*—*The term “mutual in-*  
14    *surer” means a mutual insurer organized under the*  
15    *laws of any State.*

16          (7) *PERSON.*—*The term “person” means an in-*  
17    *dividual, institution, government or governmental*  
18    *agency, State or political subdivision of a State, pub-*  
19    *lic corporation, board, association, estate, trustee, or*  
20    *fiduciary, or other similar entity.*

21          (8) *POLICYHOLDER.*—*The term “policyholder”*  
22    *means the owner of a policy issued by a mutual in-*  
23    *surer, except that, with respect to voting rights, the*  
24    *term means a member of a mutual insurer or mutual*

1     *holding company granted the right to vote, as deter-*  
 2     *mined under applicable State law.*

3             (9) *REDOMESTICATED INSURER.*—*The term “re-*  
 4     *domesticated insurer” means a mutual insurer that*  
 5     *has redomesticated pursuant to this subtitle.*

6             (10) *REDOMESTICATING INSURER.*—*The term*  
 7     *“redomesticating insurer” means a mutual insurer*  
 8     *that is redomesticating pursuant to this subtitle.*

9             (11) *REDOMESTICATION OR TRANSFER.*—*The*  
 10    *terms “redomestication” and “transfer” mean the*  
 11    *transfer of the domicile of a mutual insurer from one*  
 12    *State to another State pursuant to this subtitle.*

13            (12) *STATE INSURANCE REGULATOR.*—*The term*  
 14    *“State insurance regulator” means the principal in-*  
 15    *surance regulatory authority of a State, the District*  
 16    *of Columbia, American Samoa, Guam, Puerto Rico,*  
 17    *or the United States Virgin Islands.*

18            (13) *STATE LAW.*—*The term “State law” means*  
 19    *the statutes of any State, the District of Columbia,*  
 20    *American Samoa, Guam, Puerto Rico, or the United*  
 21    *States Virgin Islands and any regulation, order, or*  
 22    *requirement prescribed pursuant to any such statute.*

23            (14) *TRANSFEREE DOMICILE.*—*The term “trans-*  
 24    *feree domicile” means the State to which a mutual*  
 25    *insurer is redomesticating pursuant to this subtitle.*

1           (15) *TRANSFEROR DOMICILE*.—The term “trans-  
 2       *feror domicile*” means the State from which a mutual  
 3       insurer is redomesticating pursuant to this subtitle.

4   **SEC. 316. EFFECTIVE DATE.**

5       This subtitle shall take effect on the date of the enact-  
 6       ment of this Act.

7   **Subtitle C—National Association of**  
 8       **Registered Agents and Brokers**

9   **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**  
 10       **REFORMS.**

11       (a) *IN GENERAL*.—The provisions of this subtitle shall  
 12       take effect unless, not later than 3 years after the date of  
 13       the enactment of this Act, at least a majority of the States—

14           (1) have enacted uniform laws and regulations  
 15       governing the licensure of individuals and entities au-  
 16       thorized to sell and solicit the purchase of insurance  
 17       within the State; or

18           (2) have enacted reciprocity laws and regula-  
 19       tions governing the licensure of nonresident individ-  
 20       uals and entities authorized to sell and solicit insur-  
 21       ance within those States.

22       (b) *UNIFORMITY REQUIRED*.—States shall be deemed  
 23       to have established the uniformity necessary to satisfy sub-  
 24       section (a)(1) if the States—

1           (1) *establish uniform criteria regarding the in-*  
2           *tegrity, personal qualifications, education, training,*  
3           *and experience of licensed insurance producers, in-*  
4           *cluding the qualification and training of sales per-*  
5           *sonnel in ascertaining the appropriateness of a par-*  
6           *ticular insurance product for a prospective customer;*

7           (2) *establish uniform continuing education re-*  
8           *quirements for licensed insurance producers;*

9           (3) *establish uniform ethics course requirements*  
10          *for licensed insurance producers in conjunction with*  
11          *the continuing education requirements under para-*  
12          *graph (2);*

13          (4) *establish uniform criteria to ensure that an*  
14          *insurance product, including any annuity contract,*  
15          *sold to a consumer is suitable and appropriate for the*  
16          *consumer based on financial information disclosed by*  
17          *the consumer; and*

18          (5) *do not impose any requirement upon any in-*  
19          *surance producer to be licensed or otherwise qualified*  
20          *to do business as a nonresident that has the effect of*  
21          *limiting or conditioning that producer's activities be-*  
22          *cause of its residence or place of operations, except*  
23          *that counter-signature requirements imposed on non-*  
24          *resident producers shall not be deemed to have the ef-*  
25          *fect of limiting or conditioning a producer's activities*

1       *because of its residence or place of operations under*  
 2       *this section.*

3       (c) *RECIPROCITY REQUIRED.*—*States shall be deemed*  
 4       *to have established the reciprocity required to satisfy sub-*  
 5       *section (a)(2) if the following conditions are met:*

6               (1) *ADMINISTRATIVE LICENSING PROCEDURES.*—  
 7       *At least a majority of the States permit a producer*  
 8       *that has a resident license for selling or soliciting the*  
 9       *purchase of insurance in its home State to receive a*  
 10       *license to sell or solicit the purchase of insurance in*  
 11       *such majority of States as a nonresident to the same*  
 12       *extent that such producer is permitted to sell or solicit*  
 13       *the purchase of insurance in its State, if the pro-*  
 14       *ducer's home State also awards such licenses on such*  
 15       *a reciprocal basis, without satisfying any additional*  
 16       *requirements other than submitting—*

17                       (A) *a request for licensure;*

18                       (B) *the application for licensure that the*  
 19       *producer submitted to its home State;*

20                       (C) *proof that the producer is licensed and*  
 21       *in good standing in its home State; and*

22                       (D) *the payment of any requisite fee to the*  
 23       *appropriate authority.*

24               (2) *CONTINUING EDUCATION REQUIREMENTS.*—*A*  
 25       *majority of the States accept an insurance producer's*

1        *satisfaction of its home State's continuing education*  
 2        *requirements for licensed insurance producers to sat-*  
 3        *isfy the States' own continuing education require-*  
 4        *ments if the producer's home State also recognizes the*  
 5        *satisfaction of continuing education requirements on*  
 6        *such a reciprocal basis.*

7            (3) *NO LIMITING NONRESIDENT REQUIRE-*  
 8        *MENTS.—A majority of the States do not impose any*  
 9        *requirement upon any insurance producer to be li-*  
 10       *censed or otherwise qualified to do business as a non-*  
 11       *resident that has the effect of limiting or conditioning*  
 12       *that producer's activities because of its residence or*  
 13       *place of operations, except that countersignature re-*  
 14       *quirements imposed on nonresident producers shall*  
 15       *not be deemed to have the effect of limiting or condi-*  
 16       *tioning a producer's activities because of its residence*  
 17       *or place of operations under this section.*

18           (4) *RECIPROCAL RECIPROCITY.—Each of the*  
 19        *States that satisfies paragraphs (1), (2), and (3)*  
 20        *grants reciprocity to residents of all of the other*  
 21        *States that satisfy such paragraphs.*

22        (d) *DETERMINATION.—*

23           (1) *NAIC DETERMINATION.—At the end of the 3-*  
 24        *year period beginning on the date of the enactment of*  
 25        *this Act, the National Association of Insurance Com-*



1       missioners shall determine, in consultation with the  
 2       insurance commissioners or chief insurance regu-  
 3       latory officials of the States, whether the uniformity  
 4       or reciprocity required by subsections (b) and (c) has  
 5       been achieved.

6               (2) *JUDICIAL REVIEW.*—The appropriate United  
 7       States district court shall have exclusive jurisdiction  
 8       over any challenge to the National Association of In-  
 9       surance Commissioners' determination under this sec-  
 10      tion and such court shall apply the standards set  
 11      forth in section 706 of title 5, United States Code,  
 12      when reviewing any such challenge.

13          (e) *CONTINUED APPLICATION.*—If, at any time, the  
 14      uniformity or reciprocity required by subsections (b) and  
 15      (c) no longer exists, the provisions of this subtitle shall take  
 16      effect 2 years after the date on which such uniformity or  
 17      reciprocity ceases to exist, unless the uniformity or reci-  
 18      procity required by those provisions is satisfied before the  
 19      expiration of that 2-year period.

20          (f) *SAVINGS PROVISION.*—No provision of this section  
 21      shall be construed as requiring that any law, regulation,  
 22      provision, or action of any State which purports to regulate  
 23      insurance producers, including any such law, regulation,  
 24      provision, or action which purports to regulate unfair trade  
 25      practices or establish consumer protections, including

1 countersignature laws, be altered or amended in order to  
 2 satisfy the uniformity or reciprocity required by subsections  
 3 (b) and (c), unless any such law, regulation, provision, or  
 4 action is inconsistent with a specific requirement of any  
 5 such subsection and then only to the extent of such incon-  
 6 sistency.

7 (g) *UNIFORM LICENSING.*—Nothing in this section  
 8 shall be construed to require any State to adopt new or ad-  
 9 ditional licensing requirements to achieve the uniformity  
 10 necessary to satisfy subsection (a)(1).

11 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED AGENTS**  
 12 **AND BROKERS.**

13 (a) *ESTABLISHMENT.*—There is established the Na-  
 14 tional Association of Registered Agents and Brokers (here-  
 15 after in this subtitle referred to as the “Association”).

16 (b) *STATUS.*—The Association shall—

17 (1) be a nonprofit corporation;

18 (2) have succession until dissolved by an Act of  
 19 Congress;

20 (3) not be an agent or instrumentality of the  
 21 United States Government; and

22 (4) except as otherwise provided in this Act, be  
 23 subject to, and have all the powers conferred upon a  
 24 nonprofit corporation by the District of Columbia

1        *Nonprofit Corporation Act (D.C. Code, sec. 29y–1001*  
2        *et seq.).*

3    **SEC. 323. PURPOSE.**

4        *The purpose of the Association shall be to provide a*  
5        *mechanism through which uniform licensing, appointment,*  
6        *continuing education, and other insurance producer sales*  
7        *qualification requirements and conditions can be adopted*  
8        *and applied on a multistate basis, while preserving the*  
9        *right of States to license, supervise, and discipline insur-*  
10       *ance producers and to prescribe and enforce laws and regu-*  
11       *lations with regard to insurance-related consumer protec-*  
12       *tion and unfair trade practices.*

13    **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

14       *The Association shall be subject to the supervision and*  
15       *oversight of the National Association of Insurance Commis-*  
16       *sioners (hereafter in this subtitle referred to as the “NAIC”).*

17    **SEC. 325. MEMBERSHIP.**

18       (a) *ELIGIBILITY.*—

19            (1) *IN GENERAL.*—*Any State-licensed insurance*  
20        *producer shall be eligible to become a member in the*  
21        *Association.*

22            (2) *INELIGIBILITY FOR SUSPENSION OR REVOCA-*  
23        *TION OF LICENSE.*—*Notwithstanding paragraph (1),*  
24        *a State-licensed insurance producer shall not be eligi-*  
25        *ble to become a member if a State insurance regulator*

1       *has suspended or revoked such producer's license in*  
 2       *that State during the 3-year period preceding the date*  
 3       *on which such producer applies for membership.*

4               (3) *RESUMPTION OF ELIGIBILITY.*—Paragraph  
 5       (2) *shall cease to apply to any insurance producer*  
 6       *if—*

7                       (A) *the State insurance regulator renews the*  
 8                       *license of such producer in the State in which the*  
 9                       *license was suspended or revoked; or*

10                      (B) *the suspension or revocation is subse-*  
 11                      *quently overturned.*

12       (b) *AUTHORITY TO ESTABLISH MEMBERSHIP CRI-*  
 13       *TERIA.*—*The Association shall have the authority to estab-*  
 14       *lish membership criteria that—*

15                      (1) *bear a reasonable relationship to the pur-*  
 16                      *poses for which the Association was established; and*

17                      (2) *do not unfairly limit the access of smaller*  
 18                      *agencies to the Association membership.*

19       (c) *ESTABLISHMENT OF CLASSES AND CATEGORIES.*—

20                      (1) *CLASSES OF MEMBERSHIP.*—*The Association*  
 21                      *may establish separate classes of membership, with*  
 22                      *separate criteria, if the Association reasonably deter-*  
 23                      *mines that performance of different duties requires*  
 24                      *different levels of education, training, or experience.*

1           (2) *CATEGORIES.*—*The Association may estab-*  
 2           *lish separate categories of membership for individuals*  
 3           *and for other persons. The establishment of any such*  
 4           *categories of membership shall be based either on the*  
 5           *types of licensing categories that exist under State*  
 6           *laws or on the aggregate amount of business handled*  
 7           *by an insurance producer. No special categories of*  
 8           *membership, and no distinct membership criteria,*  
 9           *shall be established for members which are insured de-*  
 10          *pository institutions or wholesale financial institu-*  
 11          *tions or for their employees, agents, or affiliates.*

12          (d) *MEMBERSHIP CRITERIA.*—

13           (1) *IN GENERAL.*—*The Association may establish*  
 14           *criteria for membership which shall include standards*  
 15           *for integrity, personal qualifications, education,*  
 16           *training, and experience.*

17           (2) *MINIMUM STANDARD.*—*In establishing cri-*  
 18           *teria under paragraph (1), the Association shall con-*  
 19           *sider the highest levels of insurance producer quali-*  
 20           *fications established under the licensing laws of the*  
 21           *States.*

22           (e) *EFFECT OF MEMBERSHIP.*—*Membership in the As-*  
 23           *sociation shall entitle the member to licensure in each State*  
 24           *for which the member pays the requisite fees, including li-*

1 censing fees and, where applicable, bonding requirements,  
 2 set by such State.

3 (f) *ANNUAL RENEWAL.*—Membership in the Associa-  
 4 tion shall be renewed on an annual basis.

5 (g) *CONTINUING EDUCATION.*—The Association shall  
 6 establish, as a condition of membership, continuing edu-  
 7 cation requirements which shall be comparable to or greater  
 8 than the continuing education requirements under the li-  
 9 censing laws of a majority of the States.

10 (h) *SUSPENSION AND REVOCATION.*—The Association  
 11 may—

12 (1) inspect and examine the records and offices  
 13 of the members of the Association to determine com-  
 14 pliance with the criteria for membership established  
 15 by the Association; and

16 (2) suspend or revoke the membership of an in-  
 17 surance producer if—

18 (A) the producer fails to meet the applicable  
 19 membership criteria of the Association; or

20 (B) the producer has been subject to dis-  
 21 ciplinary action pursuant to a final adjudica-  
 22 tory proceeding under the jurisdiction of a State  
 23 insurance regulator, and the Association con-  
 24 cludes that retention of membership in the Asso-  
 25 ciation would not be in the public interest.

1       (i) *OFFICE OF CONSUMER COMPLAINTS.*—

2               (1) *IN GENERAL.*—*The Association shall establish*  
3       *an office of consumer complaints that shall—*

4                       (A) *receive and investigate complaints from*  
5       *both consumers and State insurance regulators*  
6       *related to members of the Association; and*

7                       (B) *recommend to the Association any dis-*  
8       *ciplinary actions that the office considers appro-*  
9       *priate, to the extent that any such recommenda-*  
10      *tion is not inconsistent with State law.*

11              (2) *RECORDS AND REFERRALS.*—*The office of*  
12      *consumer complaints of the Association shall—*

13                      (A) *maintain records of all complaints re-*  
14      *ceived in accordance with paragraph (1) and*  
15      *make such records available to the NAIC and to*  
16      *each State insurance regulator for the State of*  
17      *residence of the consumer who filed the com-*  
18      *plaint; and*

19                      (B) *refer, when appropriate, any such com-*  
20      *plaint to any appropriate State insurance regu-*  
21      *lator.*

22              (3) *TELEPHONE AND OTHER ACCESS.*—*The office*  
23      *of consumer complaints shall maintain a toll-free tele-*  
24      *phone number for the purpose of this subsection and,*

1       *as practicable, other alternative means of communica-*  
 2       *tion with consumers, such as an Internet home page.*

3   **SEC. 326. BOARD OF DIRECTORS.**

4       *(a) ESTABLISHMENT.—There is established the board*  
 5       *of directors of the Association (hereafter in this subtitle re-*  
 6       *ferred to as the “Board”) for the purpose of governing and*  
 7       *supervising the activities of the Association and the mem-*  
 8       *bers of the Association.*

9       *(b) POWERS.—The Board shall have such powers and*  
 10       *authority as may be specified in the bylaws of the Associa-*  
 11       *tion.*

12       *(c) COMPOSITION.—*

13               *(1) MEMBERS.—The Board shall be composed of*  
 14       *seven members appointed by the NAIC.*

15               *(2) REQUIREMENT.—At least four of the mem-*  
 16       *bers of the Board shall have significant experience*  
 17       *with the regulation of commercial lines of insurance*  
 18       *in at least 1 of the 20 States in which the greatest*  
 19       *total dollar amount of commercial-lines insurance is*  
 20       *placed in the United States.*

21               *(3) INITIAL BOARD MEMBERSHIP.—*

22                       *(A) IN GENERAL.—If, by the end of the 2-*  
 23       *year period beginning on the date of the enact-*  
 24       *ment of this Act, the NAIC has not appointed the*  
 25       *initial seven members of the Board of the Asso-*



1        *ciation, the initial Board shall consist of the*  
 2        *seven State insurance regulators of the seven*  
 3        *States with the greatest total dollar amount of*  
 4        *commercial-lines insurance in place as of the end*  
 5        *of such period.*

6                *(B) ALTERNATE COMPOSITION.—If any of*  
 7        *the State insurance regulators described in sub-*  
 8        *paragraph (A) declines to serve on the Board, the*  
 9        *State insurance regulator with the next greatest*  
 10        *total dollar amount of commercial-lines insur-*  
 11        *ance in place, as determined by the NAIC as of*  
 12        *the end of such period, shall serve as a member*  
 13        *of the Board.*

14                *(C) INOPERABILITY.—If fewer than seven*  
 15        *State insurance regulators accept appointment to*  
 16        *the Board, the Association shall be established*  
 17        *without NAIC oversight pursuant to section 332.*

18        *(d) TERMS.—The term of each director shall, after the*  
 19        *initial appointment of the members of the Board, be for 3*  
 20        *years, with one-third of the directors to be appointed each*  
 21        *year.*

22        *(e) BOARD VACANCIES.—A vacancy on the Board shall*  
 23        *be filled in the same manner as the original appointment*  
 24        *of the initial Board for the remainder of the term of the*  
 25        *vacating member.*

1       (f) *MEETINGS.*—*The Board shall meet at the call of*  
2 *the chairperson, or as otherwise provided by the bylaws of*  
3 *the Association.*

4 **SEC. 327. OFFICERS.**

5       (a) *IN GENERAL.*—

6           (1) *POSITIONS.*—*The officers of the Association*  
7 *shall consist of a chairperson and a vice chairperson*  
8 *of the Board, a president, secretary, and treasurer of*  
9 *the Association, and such other officers and assistant*  
10 *officers as may be deemed necessary.*

11          (2) *MANNER OF SELECTION.*—*Each officer of the*  
12 *Board and the Association shall be elected or ap-*  
13 *pointed at such time and in such manner and for*  
14 *such terms not exceeding 3 years as may be prescribed*  
15 *in the bylaws of the Association.*

16       (b) *CRITERIA FOR CHAIRPERSON.*—*Only individuals*  
17 *who are members of the NAIC shall be eligible to serve as*  
18 *the chairperson of the board of directors.*

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20       (a) *ADOPTION AND AMENDMENT OF BYLAWS.*—

21           (1) *COPY REQUIRED TO BE FILED WITH THE*  
22 *NAIC.*—*The board of directors of the Association shall*  
23 *file with the NAIC a copy of the proposed bylaws or*  
24 *any proposed amendment to the bylaws, accompanied*

1        *by a concise general statement of the basis and pur-*  
 2        *pose of such proposal.*

3            (2) *EFFECTIVE DATE.*—*Except as provided in*  
 4        *paragraph (3), any proposed bylaw or proposed*  
 5        *amendment shall take effect—*

6            (A) *thirty days after the date of the filing*  
 7        *of a copy with the NAIC;*

8            (B) *upon such later date as the Association*  
 9        *may designate; or*

10          (C) *upon such earlier date as the NAIC*  
 11        *may determine.*

12          (3) *DISAPPROVAL BY THE NAIC.*—*Notwith-*  
 13        *standing paragraph (2), a proposed bylaw or amend-*  
 14        *ment shall not take effect if, after public notice and*  
 15        *opportunity to participate in a public hearing—*

16          (A) *the NAIC disapproves such proposal as*  
 17        *being contrary to the public interest or contrary*  
 18        *to the purposes of this subtitle and provides no-*  
 19        *tice to the Association setting forth the reasons*  
 20        *for such disapproval; or*

21          (B) *the NAIC finds that such proposal in-*  
 22        *volves a matter of such significant public interest*  
 23        *that public comment should be obtained, in*  
 24        *which case it may, after notifying the Associa-*  
 25        *tion in writing of such finding, require that the*

1        *procedures set forth in subsection (b) be followed*  
 2        *with respect to such proposal, in the same man-*  
 3        *ner as if such proposed bylaw change were a pro-*  
 4        *posed rule change within the meaning of such*  
 5        *subsection.*

6        *(b) ADOPTION AND AMENDMENT OF RULES.—*

7            *(1) FILING PROPOSED REGULATIONS WITH THE*  
 8        *NAIC.—*

9            *(A) IN GENERAL.—The board of directors of*  
 10        *the Association shall file with the NAIC a copy*  
 11        *of any proposed rule or any proposed amend-*  
 12        *ment to a rule of the Association which shall be*  
 13        *accompanied by a concise general statement of*  
 14        *the basis and purpose of such proposal.*

15           *(B) OTHER RULES AND AMENDMENTS INEF-*  
 16        *FFECTIVE.—No proposed rule or amendment shall*  
 17        *take effect unless approved by the NAIC or other-*  
 18        *wise permitted in accordance with this para-*  
 19        *graph.*

20           *(2) INITIAL CONSIDERATION BY THE NAIC.—Not*  
 21        *later than 35 days after the date of publication of no-*  
 22        *tice of filing of a proposal, or before the end of such*  
 23        *longer period not to exceed 90 days as the NAIC may*  
 24        *designate after such date, if the NAIC finds such*  
 25        *longer period to be appropriate and sets forth its rea-*

sons for so finding, or as to which the Association consents, the NAIC shall—

(A) by order approve such proposed rule or amendment; or

(B) institute proceedings to determine whether such proposed rule or amendment should be modified or disapproved.

(3) NAIC PROCEEDINGS.—

(A) IN GENERAL.—Proceedings instituted by the NAIC with respect to a proposed rule or amendment pursuant to paragraph (2) shall—

(i) include notice of the grounds for disapproval under consideration;

(ii) provide opportunity for hearing; and

(iii) be concluded not later than 180 days after the date of the Association's filing of such proposed rule or amendment.

(B) DISPOSITION OF PROPOSAL.—At the conclusion of any proceeding under subparagraph (A), the NAIC shall, by order, approve or disapprove the proposed rule or amendment.

(C) EXTENSION OF TIME FOR CONSIDERATION.—The NAIC may extend the time for con-

1       cluding any proceeding under subparagraph (A)  
 2       for—

3               (i) not more than 60 days if the NAIC  
 4               finds good cause for such extension and sets  
 5               forth its reasons for so finding; or

6               (ii) for such longer period as to which  
 7               the Association consents.

8       (4) *STANDARDS FOR REVIEW.*—

9               (A) *GROUND*S FOR APPROVAL.—*The NAIC*  
 10       shall approve a proposed rule or amendment if  
 11       the NAIC finds that the rule or amendment is in  
 12       the public interest and is consistent with the  
 13       purposes of this Act.

14              (B) *APPROVAL BEFORE END OF NOTICE PE-*  
 15       RIOD.—*The NAIC shall not approve any pro-*  
 16       posed rule before the end of the 30-day period be-  
 17       ginning on the date on which the Association  
 18       files proposed rules or amendments in accord-  
 19       ance with paragraph (1), unless the NAIC finds  
 20       good cause for so doing and sets forth the reasons  
 21       for so finding.

22       (5) *ALTERNATE PROCEDURE.*—

23              (A) *IN GENERAL.*—*Notwithstanding any*  
 24       provision of this subsection other than subpara-  
 25       graph (B), a proposed rule or amendment relat-

ing to the administration or organization of the  
Association shall take effect—

(i) upon the date of filing with the  
NAIC, if such proposed rule or amendment  
is designated by the Association as relating  
solely to matters which the NAIC, consistent  
with the public interest and the purposes of  
this subsection, determines by rule do not  
require the procedures set forth in this  
paragraph; or

(ii) upon such date as the NAIC shall  
for good cause determine.

(B) ABROGATION BY THE NAIC.—

(i) IN GENERAL.—At any time within  
60 days after the date of filing of any pro-  
posed rule or amendment under subpara-  
graph (A)(i) or clause (ii) of this subpara-  
graph, the NAIC may repeal such rule or  
amendment and require that the rule or  
amendment be refiled and reviewed in ac-  
cordance with this paragraph, if the NAIC  
finds that such action is necessary or ap-  
propriate in the public interest, for the pro-  
tection of insurance producers or policy-

1                   *holders, or otherwise in furtherance of the*  
 2                   *purposes of this subtitle.*

3                   (ii) *EFFECT OF RECONSIDERATION BY*  
 4                   *THE NAIC.—Any action of the NAIC pursu-*  
 5                   *ant to clause (i) shall—*

6                               *(I) not affect the validity or force*  
 7                               *of a rule change during the period such*  
 8                               *rule or amendment was in effect; and*

9                               *(II) not be considered to be a final*  
 10                              *action.*

11           (c) *ACTION REQUIRED BY THE NAIC.—The NAIC*  
 12           *may, in accordance with such rules as the NAIC determines*  
 13           *to be necessary or appropriate to the public interest or to*  
 14           *carry out the purposes of this subtitle, require the Associa-*  
 15           *tion to adopt, amend, or repeal any bylaw, rule or amend-*  
 16           *ment of the Association, whenever adopted.*

17           (d) *DISCIPLINARY ACTION BY THE ASSOCIATION.—*

18                   (1) *SPECIFICATION OF CHARGES.—In any pro-*  
 19                   *ceeding to determine whether membership shall be de-*  
 20                   *nied, suspended, revoked, or not renewed (hereafter in*  
 21                   *this section referred to as a “disciplinary action”),*  
 22                   *the Association shall bring specific charges, notify*  
 23                   *such member of such charges, give the member an op-*  
 24                   *portunity to defend against the charges, and keep a*  
 25                   *record.*



1           (2) *SUPPORTING STATEMENT.*—*A determination*  
 2           *to take disciplinary action shall be supported by a*  
 3           *statement setting forth—*

4                   (A) *any act or practice in which such mem-*  
 5                   *ber has been found to have been engaged;*

6                   (B) *the specific provision of this subtitle,*  
 7                   *the rules or regulations under this subtitle, or the*  
 8                   *rules of the Association which any such act or*  
 9                   *practice is deemed to violate; and*

10                  (C) *the sanction imposed and the reason for*  
 11                  *such sanction.*

12           (e) *NAIC REVIEW OF DISCIPLINARY ACTION.*—

13                  (1) *NOTICE TO THE NAIC.*—*If the Association or-*  
 14                  *ders any disciplinary action, the Association shall*  
 15                  *promptly notify the NAIC of such action.*

16                  (2) *REVIEW BY THE NAIC.*—*Any disciplinary ac-*  
 17                  *tion taken by the Association shall be subject to re-*  
 18                  *view by the NAIC—*

19                          (A) *on the NAIC's own motion; or*

20                          (B) *upon application by any person ag-*  
 21                          *grieved by such action if such application is filed*  
 22                          *with the NAIC not more than 30 days after the*  
 23                          *later of—*

24                                  (i) *the date the notice was filed with*  
 25                                  *the NAIC pursuant to paragraph (1); or*

1                   (ii) the date the notice of the discipli-  
 2                   nary action was received by such aggrieved  
 3                   person.

4           (f) *EFFECT OF REVIEW.*—*The filing of an application*  
 5   *to the NAIC for review of a disciplinary action, or the insti-*  
 6   *tution of review by the NAIC on the NAIC's own motion,*  
 7   *shall not operate as a stay of disciplinary action unless the*  
 8   *NAIC otherwise orders.*

9           (g) *SCOPE OF REVIEW.*—

10           (1) *IN GENERAL.*—*In any proceeding to review*  
 11   *such action, after notice and the opportunity for hear-*  
 12   *ing, the NAIC shall—*

13                   (A) *determine whether the action should be*  
 14                   *taken;*

15                   (B) *affirm, modify, or rescind the discipli-*  
 16                   *nary sanction; or*

17                   (C) *remand to the Association for further*  
 18                   *proceedings.*

19           (2) *DISMISSAL OF REVIEW.*—*The NAIC may dis-*  
 20   *miss a proceeding to review disciplinary action if the*  
 21   *NAIC finds that—*

22                   (A) *the specific grounds on which the action*  
 23                   *is based exist in fact;*

24                   (B) *the action is in accordance with appli-*  
 25                   *cable rules and regulations; and*

1                   (C) such rules and regulations are, and  
 2                   were, applied in a manner consistent with the  
 3                   purposes of this subtitle.

4 **SEC. 329. ASSESSMENTS.**

5           (a) *INSURANCE PRODUCERS SUBJECT TO ASSESS-*  
 6 *MENT.*—The Association may establish such application  
 7 and membership fees as the Association finds necessary to  
 8 cover the costs of its operations, including fees made reim-  
 9 bursable to the NAIC under subsection (b), except that, in  
 10 setting such fees, the Association may not discriminate  
 11 against smaller insurance producers.

12           (b) *NAIC ASSESSMENTS.*—The NAIC may assess the  
 13 Association for any costs that the NAIC incurs under this  
 14 subtitle.

15 **SEC. 330. FUNCTIONS OF THE NAIC.**

16           (a) *ADMINISTRATIVE PROCEDURE.*—Determinations of  
 17 the NAIC, for purposes of making rules pursuant to section  
 18 328, shall be made after appropriate notice and oppor-  
 19 tunity for a hearing and for submission of views of inter-  
 20 ested persons.

21           (b) *EXAMINATIONS AND REPORTS.*—

22                   (1) *EXAMINATIONS.*—The NAIC may make such  
 23 examinations and inspections of the Association and  
 24 require the Association to furnish to the NAIC such  
 25 reports and records or copies thereof as the NAIC may

1        *consider necessary or appropriate in the public inter-*  
 2        *est or to effectuate the purposes of this subtitle.*

3            (2) *REPORT BY ASSOCIATION.*—*As soon as prac-*  
 4        *ticable after the close of each fiscal year, the Associa-*  
 5        *tion shall submit to the NAIC a written report re-*  
 6        *garding the conduct of its business, and the exercise*  
 7        *of the other rights and powers granted by this sub-*  
 8        *title, during such fiscal year. Such report shall in-*  
 9        *clude financial statements setting forth the financial*  
 10       *position of the Association at the end of such fiscal*  
 11       *year and the results of its operations (including the*  
 12       *source and application of its funds) for such fiscal*  
 13       *year. The NAIC shall transmit such report to the*  
 14       *President and the Congress with such comment there-*  
 15       *on as the NAIC determines to be appropriate.*

16    **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**  
 17                            **TORS, OFFICERS, AND EMPLOYEES OF THE**  
 18                            **ASSOCIATION.**

19        (a) *IN GENERAL.*—*The Association shall not be deemed*  
 20        *to be an insurer or insurance producer within the meaning*  
 21        *of any State law, rule, regulation, or order regulating or*  
 22        *taxing insurers, insurance producers, or other entities en-*  
 23        *gaged in the business of insurance, including provisions im-*  
 24        *posing premium taxes, regulating insurer solvency or fi-*

1 *financial condition, establishing guaranty funds and levying*  
 2 *assessments, or requiring claims settlement practices.*

3 *(b) LIABILITY OF THE ASSOCIATION, ITS DIRECTORS,*  
 4 *OFFICERS, AND EMPLOYEES.—Neither the Association nor*  
 5 *any of its directors, officers, or employees shall have any*  
 6 *liability to any person for any action taken or omitted in*  
 7 *good faith under or in connection with any matter subject*  
 8 *to this subtitle.*

9 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

10 *(a) IN GENERAL.—The Association shall be established*  
 11 *without NAIC oversight and the provisions set forth in sec-*  
 12 *tion 324, subsections (a), (b), (c), and (e) of section 328,*  
 13 *and sections 329(b) and 330 of this subtitle shall cease to*  
 14 *be effective if, at the end of the 2-year period beginning on*  
 15 *the date on which the provisions of this subtitle take effect*  
 16 *pursuant to section 321—*

17 *(1) at least a majority of the States representing*  
 18 *at least 50 percent of the total United States commer-*  
 19 *cial-lines insurance premiums have not satisfied the*  
 20 *uniformity or reciprocity requirements of subsections*  
 21 *(a), (b), and (c) of section 321; and*

22 *(2) the NAIC has not approved the Association's*  
 23 *bylaws as required by section 328 or is unable to op-*  
 24 *erate or supervise the Association, or the Association*

1        *is not conducting its activities as required under this*  
 2        *Act.*

3        *(b) BOARD APPOINTMENTS.—If the repeals required by*  
 4        *subsection (a) are implemented, the following shall apply:*

5                *(1) GENERAL APPOINTMENT POWER.—The Presi-*  
 6        *dent, with the advice and consent of the Senate, shall*  
 7        *appoint the members of the Association’s Board estab-*  
 8        *lished under section 326 from lists of candidates rec-*  
 9        *ommended to the President by the National Associa-*  
 10       *tion of Insurance Commissioners.*

11               *(2) PROCEDURES FOR OBTAINING NATIONAL AS-*  
 12       *SOCIATION OF INSURANCE COMMISSIONERS APPOINT-*  
 13       *MENT RECOMMENDATIONS.—*

14               *(A) INITIAL DETERMINATION AND REC-*  
 15       *COMMENDATIONS.—After the date on which the*  
 16       *provisions of subsection (a) take effect, the NAIC*  
 17       *shall, not later than 60 days thereafter, provide*  
 18       *a list of recommended candidates to the Presi-*  
 19       *dent. If the NAIC fails to provide a list by that*  
 20       *date, or if any list that is provided does not in-*  
 21       *clude at least 14 recommended candidates or*  
 22       *comply with the requirements of section 326(c),*  
 23       *the President shall, with the advice and consent*  
 24       *of the Senate, make the requisite appointments*  
 25       *without considering the views of the NAIC.*

1           (B) *SUBSEQUENT APPOINTMENTS.*—After  
2           the initial appointments, the NAIC shall provide  
3           a list of at least six recommended candidates for  
4           the Board to the President by January 15 of  
5           each subsequent year. If the NAIC fails to pro-  
6           vide a list by that date, or if any list that is pro-  
7           vided does not include at least six recommended  
8           candidates or comply with the requirements of  
9           section 326(c), the President, with the advice and  
10          consent of the Senate, shall make the requisite  
11          appointments without considering the views of  
12          the NAIC.

13          (C) *PRESIDENTIAL OVERSIGHT.*—

14               (i) *REMOVAL.*—If the President deter-  
15               mines that the Association is not acting in  
16               the interests of the public, the President  
17               may remove the entire existing Board for  
18               the remainder of the term to which the  
19               members of the Board were appointed and  
20               appoint, with the advice and consent of the  
21               Senate, new members to fill the vacancies  
22               on the Board for the remainder of such  
23               terms.

24               (ii) *SUSPENSION OF RULES OR AC-*  
25               *TIONS.*—The President, or a person des-

1                   *ignated by the President for such purpose,*  
 2                   *may suspend the effectiveness of any rule, or*  
 3                   *prohibit any action, of the Association*  
 4                   *which the President or the designee deter-*  
 5                   *mines is contrary to the public interest.*

6           (c) *ANNUAL REPORT.*—*As soon as practicable after the*  
 7   *close of each fiscal year, the Association shall submit to the*  
 8   *President and to the Congress a written report relative to*  
 9   *the conduct of its business, and the exercise of the other*  
 10   *rights and powers granted by this subtitle, during such fis-*  
 11   *cal year. Such report shall include financial statements set-*  
 12   *ting forth the financial position of the Association at the*  
 13   *end of such fiscal year and the results of its operations (in-*  
 14   *cluding the source and application of its funds) for such*  
 15   *fiscal year.*

16   **SEC. 333. RELATIONSHIP TO STATE LAW.**

17           (a) *PREEMPTION OF STATE LAWS.*—*State laws, regu-*  
 18   *lations, provisions, or other actions purporting to regulate*  
 19   *insurance producers shall be preempted as provided in sub-*  
 20   *section (b).*

21           (b) *PROHIBITED ACTIONS.*—*No State shall—*

22                   (1) *impede the activities of, take any action*  
 23                   *against, or apply any provision of law or regulation*  
 24                   *to, any insurance producer because that insurance*



1       producer or any affiliate plans to become, has applied  
2       to become, or is a member of the Association;

3           (2) impose any requirement upon a member of  
4       the Association that it pay different fees to be licensed  
5       or otherwise qualified to do business in that State, in-  
6       cluding bonding requirements, based on its residency;

7           (3) impose any licensing, appointment, integ-  
8       rity, personal or corporate qualifications, education,  
9       training, experience, residency, or continuing edu-  
10      cation requirement upon a member of the Association  
11      that is different from the criteria for membership in  
12      the Association or renewal of such membership, except  
13      that counter-signature requirements imposed on non-  
14      resident producers shall not be deemed to have the ef-  
15      fect of limiting or conditioning a producer's activities  
16      because of its residence or place of operations under  
17      this section; or

18           (4) implement the procedures of such State's sys-  
19      tem of licensing or renewing the licenses of insurance  
20      producers in a manner different from the authority of  
21      the Association under section 325.

22      (c) SAVINGS PROVISION.—Except as provided in sub-  
23      sections (a) and (b), no provision of this section shall be  
24      construed as altering or affecting the continuing effective-  
25      ness of any law, regulation, provision, or other action of

1 *any State which purports to regulate insurance producers,*  
 2 *including any such law, regulation, provision, or action*  
 3 *which purports to regulate unfair trade practices or estab-*  
 4 *lish consumer protections, including countersignature laws.*

5 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

6 (a) *COORDINATION WITH STATE INSURANCE REGU-*  
 7 *LATORS.—The Association shall have the authority to—*

8 (1) *issue uniform insurance producer applica-*  
 9 *tions and renewal applications that may be used to*  
 10 *apply for the issuance or removal of State licenses,*  
 11 *while preserving the ability of each State to impose*  
 12 *such conditions on the issuance or renewal of a license*  
 13 *as are consistent with section 333;*

14 (2) *establish a central clearinghouse through*  
 15 *which members of the Association may apply for the*  
 16 *issuance or renewal of licenses in multiple States; and*

17 (3) *establish or utilize a national database for*  
 18 *the collection of regulatory information concerning*  
 19 *the activities of insurance producers.*

20 (b) *COORDINATION WITH THE NATIONAL ASSOCIATION*  
 21 *OF SECURITIES DEALERS.—The Association shall coordi-*  
 22 *nate with the National Association of Securities Dealers in*  
 23 *order to ease any administrative burdens that fall on per-*  
 24 *sons that are members of both associations, consistent with*  
 25 *the purposes of this subtitle and the Federal securities laws.*

1 **SEC. 335. JUDICIAL REVIEW.**

2       (a) *JURISDICTION.*—*The appropriate United States*  
 3 *district court shall have exclusive jurisdiction over litiga-*  
 4 *tion involving the Association, including disputes between*  
 5 *the Association and its members that arise under this sub-*  
 6 *title. Suits brought in State court involving the Association*  
 7 *shall be deemed to have arisen under Federal law and there-*  
 8 *fore be subject to jurisdiction in the appropriate United*  
 9 *States district court.*

10       (b) *EXHAUSTION OF REMEDIES.*—*An aggrieved person*  
 11 *shall be required to exhaust all available administrative*  
 12 *remedies before the Association and the NAIC before it may*  
 13 *seek judicial review of an Association decision.*

14       (c) *STANDARDS OF REVIEW.*—*The standards set forth*  
 15 *in section 553 of title 5, United States Code, shall be ap-*  
 16 *plied whenever a rule or bylaw of the Association is under*  
 17 *judicial review, and the standards set forth in section 554*  
 18 *of title 5, United States Code, shall be applied whenever*  
 19 *a disciplinary action of the Association is judicially re-*  
 20 *viewed.*

21 **SEC. 336. DEFINITIONS.**

22       *For purposes of this subtitle, the following definitions*  
 23 *shall apply:*

24               (1) *HOME STATE.*—*The term “home State”*  
 25 *means the State in which the insurance producer*

1       *maintains its principal place of residence and is li-*  
2       *censed to act as an insurance producer.*

3           (2) *INSURANCE.*—*The term “insurance” means*  
4       *any product, other than title insurance, defined or*  
5       *regulated as insurance by the appropriate State in-*  
6       *surance regulatory authority.*

7           (3) *INSURANCE PRODUCER.*—*The term “insur-*  
8       *ance producer” means any insurance agent or broker,*  
9       *surplus lines broker, insurance consultant, limited in-*  
10      *surance representative, and any other person that so-*  
11      *licits, negotiates, effects, procures, delivers, renews,*  
12      *continues or binds policies of insurance or offers ad-*  
13      *vice, counsel, opinions or services related to insur-*  
14      *ance.*

15          (4) *STATE.*—*The term “State” includes any*  
16      *State, the District of Columbia, American Samoa,*  
17      *Guam, Puerto Rico, and the United States Virgin Is-*  
18      *lands.*

19          (5) *STATE LAW.*—*The term “State law” includes*  
20      *all laws, decisions, rules, regulations, or other State*  
21      *action having the effect of law, of any State. A law*  
22      *of the United States applicable only to the District of*  
23      *Columbia shall be treated as a State law rather than*  
24      *a law of the United States.*

***Subtitle D—Rental Car Agency  
Insurance Activities***

***SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHICLE  
RENTALS.***

*(a) PROTECTION AGAINST RETROACTIVE APPLICATION  
OF REGULATORY AND LEGAL ACTION.—Except as provided  
in subsection (b), during the 3-year period beginning on  
the date of the enactment of this Act, it shall be a presump-  
tion that no State law imposes any licensing, appointment,  
or education requirements on any person who solicits the  
purchase of or sells insurance connected with, and inci-  
dental to, the lease or rental of a motor vehicle.*

*(b) PREEMINENCE OF STATE INSURANCE LAW.—No  
provision of this section shall be construed as altering the  
validity, interpretation, construction, or effect of—*

*(1) any State statute;*

*(2) the prospective application of any court  
judgment interpreting or applying any State statute;  
or*

*(3) the prospective application of any final State  
regulation, order, bulletin, or other statutorily author-  
ized interpretation or action,*

*which, by its specific terms, expressly regulates or exempts  
from regulation any person who solicits the purchase of or*

1 *sells insurance connected with, and incidental to, the short-*  
 2 *term lease or rental of a motor vehicle.*

3 (c) *SCOPE OF APPLICATION.—This section shall apply*  
 4 *with respect to—*

5 (1) *the lease or rental of a motor vehicle for a*  
 6 *total period of 90 consecutive days or less; and*

7 (2) *insurance which is provided in connection*  
 8 *with, and incidentally to, such lease or rental for a*  
 9 *period of consecutive days not exceeding the lease or*  
 10 *rental period.*

11 (d) *MOTOR VEHICLE DEFINED.—For purposes of this*  
 12 *section, the term “motor vehicle” has the meaning given to*  
 13 *such term in section 13102 of title 49, United States Code.*

## 14 ***Subtitle E—Confidentiality***

### 15 ***SEC. 351. CONFIDENTIALITY OF HEALTH AND MEDICAL IN-*** 16 ***FORMATION.***

17 (a) *IN GENERAL.—A company which underwrites or*  
 18 *sells annuities contracts or contracts insuring, guaran-*  
 19 *teeing, or indemnifying against loss, harm, damage, illness,*  
 20 *disability, or death (other than credit-related insurance)*  
 21 *and any subsidiary or affiliate thereof shall maintain a*  
 22 *practice of protecting the confidentiality of individually*  
 23 *identifiable customer health and medical and genetic infor-*  
 24 *mation and may disclose such information only—*

1           (1) *with the consent, or at the direction, of the*  
2     *customer;*

3           (2) *for insurance underwriting and reinsuring*  
4     *policies, account administration, reporting, inves-*  
5     *tigating, or preventing fraud or material misrepre-*  
6     *sentation, processing premium payments, processing*  
7     *insurance claims, administering insurance benefits*  
8     *(including utilization review activities), providing in-*  
9     *formation to the customer's physician or other health*  
10    *care provider, participating in research projects, ena-*  
11    *bling the purchase, transfer, merger, or sale of any in-*  
12    *surance-related business, or as otherwise required or*  
13    *specifically permitted by Federal or State law; or*

14          (3) *in connection with—*

15           (A) *the authorization, settlement, billing,*  
16           *processing, clearing, transferring, reconciling, or*  
17           *collection of amounts charged, debited, or other-*  
18           *wise paid using a debit, credit, or other payment*  
19           *card or account number, or by other payment*  
20           *means;*

21           (B) *the transfer of receivables, accounts, or*  
22           *interest therein;*

23           (C) *the audit of the debit, credit, or other*  
24           *payment information;*

1                   (D) compliance with Federal, State, or local  
2                   law;

3                   (E) compliance with a properly authorized  
4                   civil, criminal, or regulatory investigation by  
5                   Federal, State, or local authorities as governed  
6                   by the requirements of this section; or

7                   (F) fraud protection, risk control, resolving  
8                   customer disputes or inquiries, communicating  
9                   with the person to whom the information relates,  
10                  or reporting to consumer reporting agencies.

11           (b) *STATE ACTIONS FOR VIOLATIONS.*—In addition to  
12 such other remedies as are provided under State law, if the  
13 chief law enforcement officer of a State, State insurance reg-  
14 ulator, or an official or agency designated by a State, has  
15 reason to believe that any person has violated or is violating  
16 this title, the State may bring an action to enjoin such vio-  
17 lation in any appropriate United States district court or  
18 in any other court of competent jurisdiction.

19           (c) *EFFECTIVE DATE; SUNSET.*—

20                   (1) *EFFECTIVE DATE.*—Except as provided in  
21 paragraph (2), subsection (a) shall take effect on Feb-  
22 ruary 1, 2000.

23                   (2) *SUNSET.*—Subsection (a) shall not take effect  
24 if, or shall cease to be effective on and after the date  
25 on which, legislation is enacted that satisfies the re-



quirements in section 264(c)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

(d) CONSULTATION.—While subsection (a) is in effect, State insurance regulatory authorities, through the National Association of Insurance Commissioners, shall consult with the Secretary of Health and Human Services in connection with the administration of such subsection.

## **TITLE IV—UNITARY SAVINGS AND LOAN HOLDING COMPANIES**

### **SEC. 401. PROHIBITION ON NEW UNITARY SAVINGS AND LOAN HOLDING COMPANIES.**

(a) IN GENERAL.—Section 10(c) of the Home Owners’ Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

“(9) TERMINATION OF EXPANDED POWERS FOR  
NEW UNITARY HOLDING COMPANY.—

“(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after March 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a

1        *savings association), only in activities that are*  
 2        *permitted—*

3                *“(i) under paragraph (1)(C) or (2); or*

4                *“(ii) for financial holding companies*  
 5                *under section 6(c) of the Bank Holding*  
 6                *Company Act of 1956.*

7                *“(B) EXISTING UNITARY HOLDING COMPA-*  
 8                *NIES AND THE SUCCESSORS TO SUCH COMPA-*  
 9                *NIES.—Subparagraph (A) shall not apply, and*  
 10                *paragraph (3) shall continue to apply, to a com-*  
 11                *pany (or any subsidiary of such company)*  
 12                *that—*

13                *“(i) either—*

14                *“(I) acquired one or more savings*  
 15                *associations described in paragraph (3)*  
 16                *pursuant to applications at least one*  
 17                *of which was filed on or before March*  
 18                *4, 1999; or*

19                *“(II) subject to subparagraph (C),*  
 20                *became a savings and loan holding*  
 21                *company by acquiring control of the*  
 22                *company described in subclause (I);*  
 23                *and*

24                *“(ii) continues to control the savings*  
 25                *association referred to in clause (i)(II) or*

1           *the successor to any such savings associa-*  
 2           *tion.*

3           “(C) *NOTICE PROCESS FOR NONFINANCIAL*  
 4           *ACTIVITIES BY A SUCCESSOR UNITARY HOLDING*  
 5           *COMPANY.—*

6                   “(i) *NOTICE REQUIRED.—Subpara-*  
 7                   *graph (B) shall not apply to any company*  
 8                   *described in subparagraph (B)(i)(II) which*  
 9                   *engages, directly or indirectly, in any activ-*  
 10                   *ity other than activities described in clauses*  
 11                   *(i) and (ii) of subparagraph (A), unless—*

12                           “(I) *in addition to an application*  
 13                           *to the Director under this section to be-*  
 14                           *come a savings and loan holding com-*  
 15                           *pany, the company submits a notice to*  
 16                           *the Board of Governors of the Federal*  
 17                           *Reserve System of such nonfinancial*  
 18                           *activities in the same manner as a no-*  
 19                           *tice of nonbanking activities is filed*  
 20                           *with the Board under section 4(j) of*  
 21                           *the Bank Holding Company Act of*  
 22                           *1956; and*

23                           “(II) *before the end of the applica-*  
 24                           *ble period under such section 4(j), the*  
 25                           *Board either approves or does not dis-*

1                    *approve of the continuation of such ac-*  
 2                    *tivities by such company, directly or*  
 3                    *indirectly, after becoming a savings*  
 4                    *and loan holding company.*

5                    *“(ii) PROCEDURE.—Section 4(j) of the*  
 6                    *Bank Holding Company Act of 1956, in-*  
 7                    *cluding the standards for review, shall*  
 8                    *apply to any notice filed with the Board*  
 9                    *under this subparagraph in the same man-*  
 10                    *ner as it applies to notices filed under such*  
 11                    *section.”.*

12                    *(b) TECHNICAL AND CONFORMING AMENDMENT.—Sec-*  
 13                    *tion 10(c)(3) of the Home Owners’ Loan Act (12 U.S.C.*  
 14                    *1467a(c)(3)) is amended by striking “Notwithstanding”*  
 15                    *and inserting “Except as provided in paragraph (9) and*  
 16                    *notwithstanding”.*

17                    *(c) CONFORMING AMENDMENT.—Section 10(o)(5) of*  
 18                    *the Home Owners’ Loan Act (12 U.S.C. 1467a(o)(5)) is*  
 19                    *amended—*

20                    *(1) in subparagraph (E), by striking “, except*  
 21                    *subparagraph (B)”;* and

22                    *(2) by adding at the end the following new sub-*  
 23                    *paragraph:*

24                    *“(F) In the case of a mutual holding com-*  
 25                    *pany which is a savings and loan holding com-*

pany described in subsection (c)(3), engaging in the activities permitted for financial holding companies under section 6(c) of the Bank Holding Company Act of 1956.”.

**SEC. 402. RETENTION OF “FEDERAL” IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.**

Section 2 of the Act entitled “An Act to enable national banking associations to increase their capital stock and to change their names or locations”, approved May 1, 1886 (12 U.S.C. 30), is amended by adding at the end the following new subsection:

“(d) *RETENTION OF ‘FEDERAL’ IN NAME OF CONVERTED FEDERAL SAVINGS ASSOCIATION.*—

“(1) *IN GENERAL.*—Notwithstanding subsection (a) or any other provision of law, any depository institution the charter of which is converted from that of a Federal savings association to a national bank or a State bank after the date of the enactment of the Financial Services Act of 1999 may retain the term ‘Federal’ in the name of such institution if such depository institution remains an insured depository institution.

“(2) *DEFINITIONS.*—For purposes of this subsection, the terms ‘depository institution’, ‘insured depository institution’, ‘national bank’, and ‘State

1       *bank' have the same meanings as in section 3 of the*  
 2       *Federal Deposit Insurance Act.”.*

3                   ***TITLE V—PRIVACY***  
 4       ***Subtitle A—Disclosure of Nonpublic***  
 5                   ***Personal Information***

6       ***SEC. 501. PROTECTION OF NONPUBLIC PERSONAL INFOR-***  
 7                   ***MATION.***

8           (a) *PRIVACY OBLIGATION POLICY.*—*It is the policy of*  
 9       *the Congress that each financial institution has an affirma-*  
 10       *tive and continuing obligation to respect the privacy of its*  
 11       *customers and to protect the security and confidentiality*  
 12       *of those customers' nonpublic personal information.*

13          (b) *FINANCIAL INSTITUTIONS SAFEGUARDS.*—*In fur-*  
 14       *therance of the policy in subsection (a), each agency or au-*  
 15       *thority described in section 505(a) shall establish appro-*  
 16       *priate standards for the financial institutions subject to*  
 17       *their jurisdiction relating to administrative, technical, and*  
 18       *physical safeguards—*

19               (1) *to insure the security and confidentiality of*  
 20       *customer records and information;*

21               (2) *to protect against any anticipated threats or*  
 22       *hazards to the security or integrity of such records;*  
 23       *and*

24               (3) *to protect against unauthorized access to or*  
 25       *use of such records or information which could result*

5       (a) *NOTICE REQUIREMENTS.*—*Except as otherwise*  
6 *provided in this subtitle, a financial institution may not,*  
7 *directly or through any affiliate, disclose to a nonaffiliated*  
8 *third party any nonpublic personal information, unless*  
9 *such financial institution provides or has provided to the*  
10 *consumer a notice that complies with section 503(b).*

(1) *IN GENERAL.*—A financial institution may not disclose nonpublic personal information to non-affiliated third parties unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form (or other form permitted by the regulations prescribed under section 504), that such information may be disclosed to such third parties;

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1                   (C) the consumer is given an explanation of  
2                   how the consumer can exercise that nondisclosure  
3                   option.

4                   (2) *EXCEPTION.*—This subsection shall not pre-  
5                   vent a financial institution from providing nonpublic  
6                   personal information to a nonaffiliated third party to  
7                   perform services or functions on behalf of the finan-  
8                   cial institution, including marketing of the financial  
9                   institution’s own products or services or financial  
10                  products or services offered pursuant to joint agree-  
11                  ments between two or more financial institutions that  
12                  comply with the requirements imposed by the regula-  
13                  tions prescribed under section 504, if the financial in-  
14                  stitution fully discloses the providing of such informa-  
15                  tion and enters into a contractual agreement with the  
16                  third party that requires the third party to maintain  
17                  the confidentiality of such information.

18                  (c) *LIMITS ON REUSE OF INFORMATION.*—Except as  
19                  otherwise provided in this subtitle, a nonaffiliated third  
20                  party that receives from a financial institution nonpublic  
21                  personal information under this section shall not, directly  
22                  or through an affiliate of such receiving third party, dis-  
23                  close such information to any other person that is a non-  
24                  affiliated third party of both the financial institution and  
25                  such receiving third party, unless such disclosure would be



1 *lawful if made directly to such other person by the financial*  
 2 *institution.*

3       (d) *LIMITATIONS ON THE SHARING OF ACCOUNT NUM-*  
 4 *BER INFORMATION FOR MARKETING PURPOSES.*—*A finan-*  
 5 *cial institution shall not disclose an account number or*  
 6 *similar form of access number or access code for a credit*  
 7 *card account, deposit account, or transaction account of a*  
 8 *consumer to any nonaffiliated third party for use in tele-*  
 9 *marketing, direct mail marketing, or other marketing*  
 10 *through electronic mail to the consumer.*

11       (e) *GENERAL EXCEPTIONS.*—*Subsections (a) and (b)*  
 12 *shall not prohibit the disclosure of nonpublic personal*  
 13 *information—*

14               (1) *as necessary to effect, administer, or enforce*  
 15 *a transaction requested or authorized by the con-*  
 16 *sumer, or in connection with—*

17                       (A) *servicing or processing a financial*  
 18 *product or service requested or authorized by the*  
 19 *consumer;*

20                       (B) *maintaining or servicing the con-*  
 21 *sumer's account with the financial institution;*  
 22 *or*

23                       (C) *a proposed or actual securitization, sec-*  
 24 *ondary market sale (including sales of servicing*

1           *rights), or similar transaction related to a trans-*  
2           *action of the consumer;*

3           *(2) with the consent or at the direction of the*  
4           *consumer;*

5           *(3) to protect the confidentiality or security of*  
6           *its records pertaining to the consumer, the service or*  
7           *product, or the transaction therein, or to protect*  
8           *against or prevent actual or potential fraud, unau-*  
9           *thorized transactions, claims, or other liability, for re-*  
10          *quired institutional risk control, or for resolving cus-*  
11          *tomers disputes or inquiries, or to persons holding a*  
12          *beneficial interest relating to the consumer, or to per-*  
13          *sons acting in a fiduciary capacity on behalf of the*  
14          *consumer;*

15          *(4) to provide information to insurance rate ad-*  
16          *visory organizations, guaranty funds or agencies, ap-*  
17          *plicable rating agencies of the financial institution,*  
18          *persons assessing the institution's compliance with in-*  
19          *dustry standards, and the institution's attorneys, ac-*  
20          *countants, and auditors;*

21          *(5) to the extent specifically permitted or re-*  
22          *quired under other provisions of law and in accord-*  
23          *ance with the Right to Financial Privacy Act of*  
24          *1978, to law enforcement agencies (including a Fed-*  
25          *eral functional regulator, a State insurance authority,*

1       or the Federal Trade Commission), self-regulatory or-  
 2       ganizations, or for an investigation on a matter re-  
 3       lated to public safety;

4               (6) to a consumer reporting agency in accord-  
 5       ance with the Fair Credit Reporting Act, or in ac-  
 6       cordance with interpretations of such Act by the  
 7       Board of Governors of the Federal Reserve System or  
 8       the Federal Trade Commission, including interpreta-  
 9       tions published as commentary (16 CFR 601–622);

10              (7) in connection with a proposed or actual sale,  
 11       merger, transfer, or exchange of all or a portion of a  
 12       business or operating unit if the disclosure of non-  
 13       public personal information concerns solely consumers  
 14       of such business or unit; or

15              (8) to comply with Federal, State, or local laws,  
 16       rules, and other applicable legal requirements; to com-  
 17       ply with a properly authorized civil, criminal, or reg-  
 18       ulatory investigation or subpoena by Federal, State,  
 19       or local authorities; or to respond to judicial process  
 20       or government regulatory authorities having jurisdic-  
 21       tion over the financial institution for examination,  
 22       compliance, or other purposes as authorized by law.

23   **SEC. 503. DISCLOSURE OF INSTITUTION PRIVACY POLICY.**

24       (a) *DISCLOSURE REQUIRED.*—A financial institution  
 25       shall clearly and conspicuously disclose to each consumer,

1 *at the time of establishing the customer relationship with*  
 2 *the consumer and not less than annually, in writing or in*  
 3 *electronic form (or other form permitted by the regulations*  
 4 *prescribed under section 504), its policies and practices*  
 5 *with respect to protecting the nonpublic personal informa-*  
 6 *tion of consumers in accordance with the rules prescribed*  
 7 *under section 504.*

8 (b) *INFORMATION TO BE INCLUDED.—The disclosure*  
 9 *required by subsection (a) shall include—*

10 (1) *the policy and practices of the institution*  
 11 *with respect to disclosing nonpublic personal informa-*  
 12 *tion to nonaffiliated third parties, other than agents*  
 13 *of the institution, consistent with section 502 of this*  
 14 *subtitle, and including—*

15 (A) *the categories of persons to whom the*  
 16 *information is or may be disclosed, other than*  
 17 *the persons to whom the information may be*  
 18 *provided pursuant to section 502(e); and*

19 (B) *the practices and policies of the institu-*  
 20 *tion with respect to disclosing of nonpublic per-*  
 21 *sonal information of persons who have ceased to*  
 22 *be customers of the financial institution;*

23 (2) *the categories of nonpublic personal informa-*  
 24 *tion that are collected by the financial institution;*

1           (3) *the policies that the institution maintains to*  
 2           *protect the confidentiality and security of nonpublic*  
 3           *personal information in accordance with section 501;*  
 4           *and*

5           (4) *the disclosures required, if any, under section*  
 6           *603(d)(2)(A)(iii) of the Fair Credit Reporting Act.*

7   **SEC. 504. RULEMAKING.**

8           (a) *REGULATORY AUTHORITY.*—*The Federal banking*  
 9           *agencies, the National Credit Union Association, the Sec-*  
 10          *retary of the Treasury, and the Securities and Exchange*  
 11          *Commission, shall jointly prescribe, after consultation with*  
 12          *the Federal Trade Commission, and representatives of State*  
 13          *insurance authorities designated by the National Associa-*  
 14          *tion of Insurance Commissioners, such regulations as may*  
 15          *be necessary to carry out the purposes of this subtitle. Such*  
 16          *regulations shall be prescribed in accordance with applica-*  
 17          *ble requirements of the title 5, United States Code, and shall*  
 18          *be issued in final form within 6 months after the date of*  
 19          *enactment of this Act.*

20          (b) *AUTHORITY TO GRANT EXCEPTIONS.*—*The regula-*  
 21          *tions prescribed under subsection (a) may include such ad-*  
 22          *ditional exceptions to subsections (a) and (b) of section 502*  
 23          *as are deemed consistent with the purposes of this subtitle.*

1 **SEC. 505. ENFORCEMENT.**

2       (a) *IN GENERAL.*—*This subtitle and the rules pre-*  
3 *scribed thereunder shall be enforced by the Federal func-*  
4 *tional regulators, the State insurance authorities, and the*  
5 *Federal Trade Commission with respect to financial insti-*  
6 *tutions subject to their jurisdiction under applicable law,*  
7 *as follows:*

8               (1) *Under section 8 of the Federal Deposit Insur-*  
9 *ance Act, in the case of—*

10                       (A) *national banks, Federal branches and*  
11 *Federal agencies of foreign banks, and any sub-*  
12 *sidaries of such entities, by the Office of the*  
13 *Comptroller of the Currency;*

14                       (B) *member banks of the Federal Reserve*  
15 *System (other than national banks), branches*  
16 *and agencies of foreign banks (other than Fed-*  
17 *eral branches, Federal agencies, and insured*  
18 *State branches of foreign banks), commercial*  
19 *lending companies owned or controlled by for-*  
20 *ign banks, organizations operating under sec-*  
21 *tion 25 or 25A of the Federal Reserve Act, bank*  
22 *holding companies and their nonbank subsidi-*  
23 *aries or affiliates (except broker-dealers, affiliates*  
24 *providing insurance, investment companies, and*  
25 *investment advisers), by the Board of Governors*  
26 *of the Federal Reserve System;*

1           (C) banks insured by the Federal Deposit  
2           Insurance Corporation (other than members of  
3           the Federal Reserve System), insured State  
4           branches of foreign banks, and any subsidiaries  
5           of such entities, by the Board of Directors of the  
6           Federal Deposit Insurance Corporation; and

7           (D) savings association the deposits of  
8           which are insured by the Federal Deposit Insur-  
9           ance Corporation, and any subsidiaries of such  
10          a savings association, by the Director of the Of-  
11          fice of Thrift Supervision.

12          (2) Under the Federal Credit Union Act, by the  
13          Administrator of the National Credit Union Adminis-  
14          tration with respect to any Federal or state chartered  
15          credit union, and any subsidiaries of such an entity.

16          (3) Under the Farm Credit Act of 1971, by the  
17          Farm Credit Administration with respect to the Fed-  
18          eral Agricultural Mortgage Corporation, any Federal  
19          land bank, Federal land bank association, Federal in-  
20          termediate credit bank, or production credit associa-  
21          tion.

22          (4) Under the Securities Exchange Act of 1934,  
23          by the Securities and Exchange Commission with re-  
24          spect to any broker-dealer.

1           (5) *Under the Investment Company Act of 1940,*  
2           *by the Securities and Exchange Commission with re-*  
3           *spect to investment companies.*

4           (6) *Under the Investment Advisers Act of 1940,*  
5           *by the Securities and Exchange Commission with re-*  
6           *spect to investment advisers registered with the Com-*  
7           *mission under such Act.*

8           (7) *Under Federal Housing Enterprises Finan-*  
9           *cial Safety and Soundness Act of 1992 (12 U. S. C.*  
10          *4501 et seq.), by the Office of Federal Housing Enter-*  
11          *prise Oversight with respect to the Federal National*  
12          *Mortgage Association and the Federal Home Loan*  
13          *Mortgage Corporation.*

14          (8) *Under the Federal Home Loan Bank Act, by*  
15          *the Federal Housing Finance Board with respect to*  
16          *Federal home loan banks.*

17          (9) *Under State insurance law, in the case of*  
18          *any person engaged in providing insurance, by the*  
19          *State insurance authority of the State in which the*  
20          *person is domiciled, subject to section 104 of this Act.*

21          (10) *Under the Federal Trade Commission Act,*  
22          *by the Federal Trade Commission for any other fi-*  
23          *nancial institution that is not subject to the jurisdic-*  
24          *tion of any agency or authority under paragraphs (1)*  
25          *through (9) of this subsection.*



1       (b) *ENFORCEMENT OF SECTION 501.*—

2           (1) *IN GENERAL.*—*Except as provided in para-*  
 3 *graph (2), the agencies and authorities described in*  
 4 *subsection (a) shall implement the standards pre-*  
 5 *scribed under section 501(b) in the same manner, to*  
 6 *the extent practicable, as standards prescribed pursu-*  
 7 *ant to subsection (a) of section 39 of the Federal De-*  
 8 *posit Insurance Act are implemented pursuant to*  
 9 *such section.*

10          (2) *EXCEPTION.*—*The agencies and authorities*  
 11 *described in paragraphs (4), (5), (6), (9), and (10) of*  
 12 *subsection (a) shall implement the standards pre-*  
 13 *scribed under section 501(b) by rule with respect to*  
 14 *the financial institutions subject to their respective ju-*  
 15 *risdictions under subsection (a).*

16          (c) *DEFINITIONS.*—*The terms used in subsection (a)(1)*  
 17 *that are not defined in this subtitle or otherwise defined*  
 18 *in section 3(s) of the Federal Deposit Insurance Act shall*  
 19 *have the meaning given to them in section 1(b) of the Inter-*  
 20 *national Banking Act of 1978.*

21 **SEC. 506. FAIR CREDIT REPORTING ACT AMENDMENT.**

22          (a) *AMENDMENT.*—*Section 621 of the Fair Credit Re-*  
 23 *porting Act (15 U.S.C. 1681s) is amended—*

24           (1) *in subsection (d), by striking everything fol-*  
 25 *lowing the end of the second sentence; and*

1           (2) by striking subsection “(e)” and inserting in  
2           *lieu thereof the following:*

3           “(e) *REGULATORY AUTHORITY.*—

4           “(1) *The Federal banking agencies referred to in*  
5           *paragraphs (1) and (2) of subsection (b) shall jointly*  
6           *prescribe such regulations as necessary to carry out*  
7           *the purposes of this Act with respect to any persons*  
8           *identified under paragraphs (1) and (2) of subsection*  
9           *(b), or to the holding companies and affiliates of such*  
10          *persons.*

11          “(2) *The Administrator of the National Credit*  
12          *Union Administration shall prescribe such regula-*  
13          *tions as necessary to carry out the purposes of this*  
14          *Act with respect to any persons identified under*  
15          *paragraph (3) of subsection (b).”.*

16          (b) *CONFORMING AMENDMENT.*—Section 621(a) of the  
17          *Fair Credit Reporting Act (15 U.S.C. 1681s(a)) is amended*  
18          *by striking paragraph (4).*

19          **SEC. 507. RELATION TO OTHER PROVISIONS.**

20          *This subtitle shall not apply to any information to*  
21          *which subtitle D of title III applies.*

22          **SEC. 508. STUDY OF INFORMATION SHARING AMONG FINAN-**  
23          **CIAL AFFILIATES.**

24          (a) *IN GENERAL.*—*The Secretary of the Treasury, in*  
25          *conjunction with the Federal functional regulators and the*

1 *Federal Trade Commission, shall conduct a study of infor-*  
2 *mation sharing practices among financial institutions and*  
3 *their affiliates. Such study shall include—*

4           *(1) the purposes for the sharing of confidential*  
5           *customer information with affiliates or with non-*  
6           *affiliated third parties;*

7           *(2) the extent and adequacy of security protec-*  
8           *tions for such information;*

9           *(3) the potential risks for customer privacy of*  
10          *such sharing of information;*

11          *(4) the potential benefits for financial institu-*  
12          *tions and affiliates of such sharing of information;*

13          *(5) the potential benefits for customers of such*  
14          *sharing of information;*

15          *(6) the adequacy of existing laws to protect cus-*  
16          *tomers privacy;*

17          *(7) the adequacy of financial institution privacy*  
18          *policy and privacy rights disclosure under existing*  
19          *law;*

20          *(8) the feasibility of different approaches, includ-*  
21          *ing opt-out and opt-in, to permit customers to direct*  
22          *that confidential information not be shared with af-*  
23          *filates and nonaffiliated third parties; and*

1           (9) *the feasibility of restricting sharing of infor-*  
 2           *mation for specific uses or of permitting customers to*  
 3           *direct the uses for which information may be shared.*

4           (b) *CONSULTATION.*—*The Secretary shall consult with*  
 5           *representatives of State insurance authorities designated by*  
 6           *the National Association of Insurance Commissioners, and*  
 7           *also with financial services industry, consumer organiza-*  
 8           *tions and privacy groups, and other representatives of the*  
 9           *general public, in formulating and conducting the study re-*  
 10          *quired by subsection (a).*

11          (c) *REPORT.*—*Before the end of the 6-month period be-*  
 12          *ginning on the date of the enactment of this Act, the Sec-*  
 13          *retary shall submit a report to the Congress containing the*  
 14          *findings and conclusions of the study required under sub-*  
 15          *section (a), together with such recommendations for legisla-*  
 16          *tive or administrative action as may be appropriate.*

17   **SEC. 509. DEFINITIONS.**

18          *As used in this subtitle:*

19           (1) *FEDERAL BANKING AGENCY.*—*The term*  
 20           *“Federal banking agency” has the meanings given to*  
 21           *such terms in section 3 of the Federal Deposit Insur-*  
 22           *ance Act.*

23           (2) *FEDERAL FUNCTIONAL REGULATOR.*—*The*  
 24           *term “Federal functional regulator” means—*

1           (A) *the Board of Governors of the Federal*  
2           *Reserve System;*

3           (B) *the Office of the Comptroller of the Cur-*  
4           *rency;*

5           (C) *the Board of Directors of the Federal*  
6           *Deposit Insurance Corporation;*

7           (D) *the Director of the Office of Thrift Su-*  
8           *pervision;*

9           (E) *the National Credit Union Administra-*  
10          *tion Board;*

11          (F) *the Farm Credit Administration; and*

12          (G) *the Securities and Exchange Commis-*  
13          *sion.*

14          (3) *FINANCIAL INSTITUTION.*—*The term “finan-*  
15          *cial institution” means any institution the business*  
16          *of which is engaging in financial activities or activi-*  
17          *ties that are incidental to financial activities, as de-*  
18          *scribed in section 6(c) of the Bank Holding Company*  
19          *Act of 1956.*

20          (4) *NONPUBLIC PERSONAL INFORMATION.*—

21               (A) *The term “nonpublic personal informa-*  
22               *tion” means personally identifiable financial*  
23               *information—*

24                       (i) *provided by a consumer to a finan-*  
25                       *cial institution;*

1                   (ii) resulting from any transaction  
2                   with the consumer or the service performed  
3                   for the consumer; or

4                   (iii) otherwise obtained by the finan-  
5                   cial institution.

6                   (B) Such term does not include publicly  
7                   available information, as such term is defined by  
8                   the regulations prescribed under section 504.

9                   (C) Notwithstanding subparagraph (B),  
10                  such term shall include any list, description, or  
11                  other grouping of consumers (and publicly avail-  
12                  able information pertaining to them) that is de-  
13                  rived using any personally identifiable informa-  
14                  tion other than publicly available information.

15                  (5) *NONAFFILIATED THIRD PARTIES.*—The term  
16                  “nonaffiliated third parties” means any entity that is  
17                  not an affiliate of, or related by common ownership  
18                  or affiliated by corporate control with, the financial  
19                  institution, but does not include a joint employee of  
20                  such institution.

21                  (6) *AFFILIATE.*—The term “affiliate” means any  
22                  company that controls, is controlled by, or is under  
23                  common control with another company.

1           (7) *NECESSARY TO EFFECT, ADMINISTER, OR EN-*  
2           *FORCE.—The term “as necessary to effect, administer*  
3           *or enforce the transaction” means—*

4                   (A) *the disclosure is required, or is a usual,*  
5                   *appropriate or acceptable method, to carry out*  
6                   *the transaction or the product or service business*  
7                   *of which the transaction is a part, and record or*  
8                   *service or maintain the consumer’s account in*  
9                   *the ordinary course of providing the financial*  
10                  *service or financial product, or to administer or*  
11                  *service benefits or claims relating to the trans-*  
12                  *action or the product or service business of which*  
13                  *it is a part, and includes—*

14                   (i) *providing the consumer or the con-*  
15                   *sumer’s agent or broker with a confirma-*  
16                   *tion, statement, or other record of the trans-*  
17                   *action, or information on the status or*  
18                   *value of the financial service or financial*  
19                   *product; and*

20                   (ii) *the accrual or recognition of incen-*  
21                   *tives or bonuses associated with the trans-*  
22                   *action that are provided by the financial*  
23                   *institution or any other party;*

24                   (B) *the disclosure is required, or is one of*  
25                  *the lawful or appropriate methods, to enforce the*

1        *rights of the financial institution or of other per-*  
2        *sons engaged in carrying out the financial trans-*  
3        *action, or providing the product or service;*

4            *(C) the disclosure is required, or is a usual,*  
5        *appropriate, or acceptable method, for insurance*  
6        *underwriting at the consumer's request or for re-*  
7        *insurance purposes, or for any of the following*  
8        *purposes as they relate to a consumer's insur-*  
9        *ance: account administration, reporting, inves-*  
10       *tigating, or preventing fraud or material mis-*  
11       *representation, processing premium payments,*  
12       *processing insurance claims, administering in-*  
13       *surance benefits (including utilization review ac-*  
14       *tivities), participating in research projects, or as*  
15       *otherwise required or specifically permitted by*  
16       *Federal or State law; or*

17           *(D) the disclosure is required, or is a usual,*  
18        *appropriate or acceptable method, in connection*  
19        *with—*

20            *(i) the authorization, settlement, bill-*  
21        *ing, processing, clearing, transferring, rec-*  
22        *onciling, or collection of amounts charged,*  
23        *debited, or otherwise paid using a debit,*  
24        *credit or other payment card, check, or ac-*  
25        *count number, or by other payment means;*



- 1                   (ii) the transfer of receivables, accounts  
2                   or interests therein; or  
3                   (iii) the audit of debit, credit or other  
4                   payment information.

5           (8) *STATE INSURANCE AUTHORITY.*—The term  
6           “State insurance authority” means, in the case of  
7           any person engaged in providing insurance, the State  
8           insurance authority of the State in which the person  
9           is domiciled.

10          (9) *CONSUMER.*—The term “consumer” means  
11          an individual who obtains, from a financial institu-  
12          tion, financial products or services which are to be  
13          used primarily for personal, family, or household  
14          purposes, and also means the legal representative of  
15          such an individual.

16          (10) *JOINT AGREEMENT.*—The term “joint agree-  
17          ment” means a formal written contract pursuant to  
18          which two or more financial institutions jointly offer,  
19          endorse, or sponsor a financial product or service,  
20          and any payments between the parties are based on  
21          business or profit generated.

22   **SEC. 510. EFFECTIVE DATE.**

23          This subtitle shall take effect 6 months after the date  
24          on which the rules under section 503 are promulgated,  
25          except—

1           (1) *to the extent that a later date is specified in*  
 2       *such rules; and*

3           (2) *that section 506 shall be effective upon enact-*  
 4       *ment.*

5       ***Subtitle B—Fraudulent Access to***  
 6       ***Financial Information***

7       ***SEC. 521. PRIVACY PROTECTION FOR CUSTOMER INFORMA-***  
 8       ***TION OF FINANCIAL INSTITUTIONS.***

9       (a) *PROHIBITION ON OBTAINING CUSTOMER INFORMA-*  
 10      *TION BY FALSE PRETENSES.—It shall be a violation of this*  
 11      *subtitle for any person to obtain or attempt to obtain, or*  
 12      *cause to be disclosed or attempt to cause to be disclosed to*  
 13      *any person, customer information of a financial institution*  
 14      *relating to another person—*

15           (1) *by making a false, fictitious, or fraudulent*  
 16      *statement or representation to an officer, employee, or*  
 17      *agent of a financial institution;*

18           (2) *by making a false, fictitious, or fraudulent*  
 19      *statement or representation to a customer of a finan-*  
 20      *cial institution; or*

21           (3) *by providing any document to an officer, em-*  
 22      *ployee, or agent of a financial institution, knowing*  
 23      *that the document is forged, counterfeit, lost, or stolen,*  
 24      *was fraudulently obtained, or contains a false, ficti-*  
 25      *tious, or fraudulent statement or representation.*

1       (b) *PROHIBITION ON SOLICITATION OF A PERSON TO*  
 2 *OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTI-*  
 3 *TUTION UNDER FALSE PRETENSES.*—*It shall be a violation*  
 4 *of this subtitle to request a person to obtain customer infor-*  
 5 *mation of a financial institution, knowing that the person*  
 6 *will obtain, or attempt to obtain, the information from the*  
 7 *institution in any manner described in subsection (a).*

8       (c) *NONAPPLICABILITY TO LAW ENFORCEMENT AGEN-*  
 9 *CIES.*—*No provision of this section shall be construed so as*  
 10 *to prevent any action by a law enforcement agency, or any*  
 11 *officer, employee, or agent of such agency, to obtain cus-*  
 12 *tomers information of a financial institution in connection*  
 13 *with the performance of the official duties of the agency.*

14       (d) *NONAPPLICABILITY TO FINANCIAL INSTITUTIONS*  
 15 *IN CERTAIN CASES.*—*No provision of this section shall be*  
 16 *construed so as to prevent any financial institution, or any*  
 17 *officer, employee, or agent of a financial institution, from*  
 18 *obtaining customer information of such financial institu-*  
 19 *tion in the course of—*

20               (1) *testing the security procedures or systems of*  
 21               *such institution for maintaining the confidentiality of*  
 22               *customer information;*

23               (2) *investigating allegations of misconduct or*  
 24               *negligence on the part of any officer, employee, or*  
 25               *agent of the financial institution; or*

1           (3) *recovering customer information of the finan-*  
 2           *cial institution which was obtained or received by an-*  
 3           *other person in any manner described in subsection*  
 4           *(a) or (b).*

5           (e) *NONAPPLICABILITY TO INSURANCE INSTITUTIONS*  
 6           *FOR INVESTIGATION OF INSURANCE FRAUD.—No provision*  
 7           *of this section shall be construed so as to prevent any insur-*  
 8           *ance institution, or any officer, employee, or agency of an*  
 9           *insurance institution, from obtaining information as part*  
 10           *of an insurance investigation into criminal activity, fraud,*  
 11           *material misrepresentation, or material nondisclosure that*  
 12           *is authorized for such institution under State law, regula-*  
 13           *tion, interpretation, or order.*

14           (f) *NONAPPLICABILITY TO CERTAIN TYPES OF CUS-*  
 15           *TOMER INFORMATION OF FINANCIAL INSTITUTIONS.—No*  
 16           *provision of this section shall be construed so as to prevent*  
 17           *any person from obtaining customer information of a fi-*  
 18           *nancial institution that otherwise is available as a public*  
 19           *record filed pursuant to the securities laws (as defined in*  
 20           *section 3(a)(47) of the Securities Exchange Act of 1934).*

21           (g) *NONAPPLICABILITY TO COLLECTION OF CHILD*  
 22           *SUPPORT JUDGMENTS.—No provision of this section shall*  
 23           *be construed to prevent any State-licensed private investi-*  
 24           *gator, or any officer, employee, or agent of such private in-*  
 25           *vestigator, from obtaining customer information of a finan-*

1 cial institution, to the extent reasonably necessary to collect  
 2 child support from a person adjudged to have been delin-  
 3 quent in his or her obligations by a Federal or State court,  
 4 and to the extent that such action by a State-licensed pri-  
 5 vate investigator is not unlawful under any other Federal  
 6 or State law or regulation, and has been authorized by an  
 7 order or judgment of a court of competent jurisdiction.

8 **SEC. 522. ADMINISTRATIVE ENFORCEMENT.**

9 (a) *ENFORCEMENT BY FEDERAL TRADE COMMIS-*  
 10 *SION.*—Compliance with this subtitle shall be enforced by  
 11 the Federal Trade Commission in the same manner and  
 12 with the same power and authority as the Commission has  
 13 under the title VIII, the Fair Debt Collection Practices Act,  
 14 to enforce compliance with such title.

15 (b) *NOTICE OF ACTIONS.*—The Federal Trade Commis-  
 16 sion shall—

17 (1) *notify the Securities and Exchange Commis-*  
 18 *sion whenever the Federal Trade Commission initi-*  
 19 *ates an investigation with respect to a financial insti-*  
 20 *tution subject to regulation by the Securities and Ex-*  
 21 *change Commission;*

22 (2) *notify the Federal banking agency (as de-*  
 23 *fined in section 3(z) of the Federal Deposit Insurance*  
 24 *Act) whenever the Commission initiates an investiga-*

1        *tion with respect to a financial institution subject to*  
 2        *regulation by such Federal banking agency; and*

3            *(3) notify the appropriate State insurance regu-*  
 4        *lator whenever the Commission initiates an investiga-*  
 5        *tion with respect to a financial institution subject to*  
 6        *regulation by such regulator.*

7    **SEC. 523. CRIMINAL PENALTY.**

8        *(a) IN GENERAL.—Whoever knowingly and inten-*  
 9        *tionally violates, or knowingly and intentionally attempts*  
 10       *to violate, section 521 shall be fined in accordance with title*  
 11       *18, United States Code, or imprisoned for not more than*  
 12       *5 years, or both.*

13       *(b) ENHANCED PENALTY FOR AGGRAVATED CASES.—*  
 14       *Whoever violates, or attempts to violate, section 521 while*  
 15       *violating another law of the United States or as part of*  
 16       *a pattern of any illegal activity involving more than*  
 17       *\$100,000 in a 12-month period shall be fined twice the*  
 18       *amount provided in subsection (b)(3) or (c)(3) (as the case*  
 19       *may be) of section 3571 of title 18, United States Code,*  
 20       *imprisoned for not more than 10 years, or both.*

21    **SEC. 524. RELATION TO STATE LAWS.**

22       *(a) IN GENERAL.—This subtitle shall not be construed*  
 23       *as superseding, altering, or affecting the statutes, regula-*  
 24       *tions, orders, or interpretations in effect in any State, ex-*  
 25       *cept to the extent that such statutes, regulations, orders, or*

1 *interpretations are inconsistent with the provisions of this*  
 2 *subtitle, and then only to the extent of the inconsistency.*

3       (b) *GREATER PROTECTION UNDER STATE LAW.—For*  
 4 *purposes of this section, a State statute, regulation, order,*  
 5 *or interpretation is not inconsistent with the provisions of*  
 6 *this subtitle if the protection such statute, regulation, order,*  
 7 *or interpretation affords any person is greater than the pro-*  
 8 *tection provided under this subtitle as determined by the*  
 9 *Commission, on its own motion or upon the petition of any*  
 10 *interested party.*

11 **SEC. 525. AGENCY GUIDANCE.**

12       *In furtherance of the objectives of this subtitle, each*  
 13 *Federal banking agency (as defined in section 3(z) of the*  
 14 *Federal Deposit Insurance Act) and the Securities and Ex-*  
 15 *change Commission or self-regulatory organizations, as ap-*  
 16 *propriate, shall review regulations and guidelines applica-*  
 17 *ble to financial institutions under their respective jurisdic-*  
 18 *tions and shall prescribe such revisions to such regulations*  
 19 *and guidelines as may be necessary to ensure that such fi-*  
 20 *nancial institutions have policies, procedures, and controls*  
 21 *in place to prevent the unauthorized disclosure of customer*  
 22 *financial information and to deter and detect activities pro-*  
 23 *scribed under section 521.*

1 **SEC. 526. REPORTS.**

2       (a) *REPORT TO THE CONGRESS.*—Before the end of the  
3 18-month period beginning on the date of the enactment of  
4 this Act, the Comptroller General, in consultation with the  
5 Federal Trade Commission, Federal banking agencies, the  
6 Securities and Exchange Commission, appropriate Federal  
7 law enforcement agencies, and appropriate State insurance  
8 regulators, shall submit to the Congress a report on the fol-  
9 lowing:

10           (1) *The efficacy and adequacy of the remedies*  
11 *provided in this subtitle in addressing attempts to ob-*  
12 *tain financial information by fraudulent means or by*  
13 *false pretenses.*

14           (2) *Any recommendations for additional legisla-*  
15 *tive or regulatory action to address threats to the pri-*  
16 *vacy of financial information created by attempts to*  
17 *obtain information by fraudulent means or false pre-*  
18 *tenses.*

19       (b) *ANNUAL REPORT BY ADMINISTERING AGENCIES.*—  
20 *The Federal Trade Commission and the Attorney General*  
21 *shall submit to Congress an annual report on number and*  
22 *disposition of all enforcement actions taken pursuant to this*  
23 *subtitle.*

24 **SEC. 527. DEFINITIONS.**

25       *For purposes of this subtitle, the following definitions*  
26 *shall apply:*



1           (1) *CUSTOMER.*—*The term “customer” means,*  
2           *with respect to a financial institution, any person (or*  
3           *authorized representative of a person) to whom the fi-*  
4           *nancial institution provides a product or service, in-*  
5           *cluding that of acting as a fiduciary.*

6           (2) *CUSTOMER INFORMATION OF A FINANCIAL IN-*  
7           *STITUTION.*—*The term “customer information of a fi-*  
8           *nancial institution” means any information main-*  
9           *tained by or for a financial institution which is de-*  
10          *derived from the relationship between the financial in-*  
11          *stitution and a customer of the financial institution*  
12          *and is identified with the customer.*

13          (3) *DOCUMENT.*—*The term “document” means*  
14          *any information in any form.*

15          (4) *FINANCIAL INSTITUTION.*—

16                (A) *IN GENERAL.*—*The term “financial in-*  
17                *stitution” means any institution engaged in the*  
18                *business of providing financial services to cus-*  
19                *tomers who maintain a credit, deposit, trust, or*  
20                *other financial account or relationship with the*  
21                *institution.*

22                (B) *CERTAIN FINANCIAL INSTITUTIONS SPE-*  
23                *CIFICALLY INCLUDED.*—*The term “financial in-*  
24                *stitution” includes any depository institution (as*  
25                *defined in section 19(b)(1)(A) of the Federal Re-*

1       *serve Act), any broker or dealer, any investment*  
 2       *adviser or investment company, any insurance*  
 3       *company, any loan or finance company, any*  
 4       *credit card issuer or operator of a credit card*  
 5       *system, and any consumer reporting agency that*  
 6       *compiles and maintains files on consumers on a*  
 7       *nationwide basis (as defined in section 603(p)).*

8               (C) *SECURITIES INSTITUTIONS.*—*For pur-*  
 9       *poses of subparagraph (B)—*

10               (i) *the terms “broker” and “dealer”*  
 11       *have the meanings provided in section 3 of*  
 12       *the Securities Exchange Act of 1934 (15*  
 13       *U.S.C. 78c);*

14               (ii) *the term “investment adviser” has*  
 15       *the meaning provided in section 202(a)(11)*  
 16       *of the Investment Advisers Act of 1940 (15*  
 17       *U.S.C. 80b–2(a)); and*

18               (iii) *the term “investment company”*  
 19       *has the meaning provided in section 3 of the*  
 20       *Investment Company Act of 1940 (15*  
 21       *U.S.C. 80a–3).*

22               (D) *FURTHER DEFINITION BY REGULA-*  
 23       *TION.*—*The Federal Trade Commission, after*  
 24       *consultation with Federal banking agencies and*  
 25       *the Securities and Exchange Commission, may*

1           *prescribe regulations clarifying or describing the*  
2           *types of institutions which shall be treated as fi-*  
3           *nancial institutions for purposes of this subtitle.*

Amend the title so as to read “An Act to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers, and for other purposes.”.

Attest:

*Clerk.*